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PASSAIC COUNTY CIRCUIT COURT

Filed September 13, 1925.

DIANA PESKOWITZ, and RUBEN PESKOWITZ (her husband) and RUBEN PESKOWITZ, Individually, JENNIE SHAPIRO and SIMON SHAPIRO (her husband), BESSIE PESKOWITZ, and DOROTHY PESKOWITZ, by her next friend RUBEN PESKOWITZ, and RUBEN PESKOWITZ, Individually,

Plaintiffs,

vs.

LAWRENCE F. KRAMER, INC. a corporation of New Jersey and JACOBUS KUIPER,

Defendants.

Action at Law.

Complaint.

FIRST COUNT

Plaintiff Diana Peskowitz, residing in the City of Passaic, County of Passaic and State of New Jersey, says that:

1. She is the wife of Ruben Peskowitz.

2. On August 2nd, 1926, plaintiff was a lawful occupant in the automobile owned by Ruben Peskowitz, and driven by one Bessie Peskowitz, said automobile being operated on and along a certain street and highway known and designated as Vreeland Ave., proceeding in a general southerly direction thereon, said Vreeland Ave. being situate in the City of Paterson, County of Passaic and State of New Jersey.

3. On or about the aforesaid date defendant by its agent and servant Jacobus Kuiper, caused a certain automobile truck to be operated on and along said street and highway known and designated as Vreeland Ave. as aforesaid, proceeding in a general northerly direction thereon.

4. On or about the aforesaid date, it became and was the duty of the said defendant by his agent and servant to operate said automobile truck, on the said road at a reasonable and lawful rate of speed, and in such a manner as to keep the same at all times under proper control, to inspect the brakes and other mechanical parts of said automobile, so that upon application of its several parts, the same would immediately respond thereto; it became the further duty of said defendant by his agent and servant to sound a signal or warning of approach at intersections of streets, and to operate said automobile in a prudent and skillful manner.

5. Yet the said defendant corporation, by its agent and servant, Jacobus Kuiper, disregarding its duties in that behalf, failed and neglected to operate said automobile at a lawful, reasonable and careful rate of speed and in a careful and prudent manner, failed and neglected to inspect the brakes and other mechanical parts of said automobile, so that upon application of its several parts, the same would immediately respond thereto; failed and neglected to sound a signal or warning of approach at intersections of streets, and failed and neglected to operate such automobile in a prudent and skillful manner.

6. As a result of the premises aforesaid, and the carelessness of the defendants herein, the automobile truck owned and operated by defendants crashed into and against with great force and violence the automobile in which the plaintiff herein

was a lawful occupant, and as a result thereof, serious external and internal injuries both temporary and permanent in character were inflicted upon the plaintiff herein to her great damage and injury, to wit: a broken arm, and many internal injuries, which said injuries necessitated plaintiff to being confined to the hospital and to her bed and home for a long time, and will be obliged to remain in said hospital and to her bed and home for a long time in the future.

7. As a result of the premises, plaintiff suffered and sustained many cuts, lacerations, abrasions, contusions and bruises about the head, arms, legs and body.

8. As a result of the premises aforesaid, plaintiff suffered both untold torment and agony of both mind and body to her great damage.

9. As a result of the premises aforesaid, plaintiff was prevented from pursuing her lawful tasks and duties as heretofore.

Wherefore plaintiff Diana Peskowitz asks damages in the sum of Ten Thousand ($10,000.00) Dollars, together with costs of court on the first count.

SECOND COUNT

Ruben Peskowitz, residing in the City of Passaic, County of Passaic and State of New Jersey, says that:

1. On August 2nd, 1926, and for a long time prior thereto, plaintiff was the owner of a certain automobile in which he was lawfully riding, and which he caused to be operated by his agent and servant Bessie Peskowitz, on and along a certain street and highway known and designated as Vreeland Ave., proceeding in a general southerly direction thereon, said Vreeland Ave., being situate in the City of Paterson, County of Passaic and State of New Jersey.

2. On or about the aforesaid date, defendant corporation was the owner of a certain automobile, which it caused to be operated by its agent and servant Jacobus Kuiper on and along said street and highway aforementioned, said automobile truck proceeding along said street and highway in a general northerly direction.

3. On or about the aforesaid date said defendants did cause said automobile truck to be operated in such a careless, negligent and reckless manner and at such a fast, unreasonable and unlawful rate of speed, so as to cause the same to crash into and against with great force and violence the automobile owned by plaintiff herein.

4. As a result of the premises aforesaid, plaintiff was obliged to expend divers sums and incur divers debts for the repair of said automobile.

5. As a result of the premises aforesaid, plaintiff was deprived of the use of said automobile.

Wherefore plaintiff Ruben Peskowitz asks damages in the sum of Three Thousand ($3000.00) Dollars, together with costs of court on the second count.

THIRD COUNT

Ruben Peskowitz, residing in the City of Passaic, County of Passaic and State of New Jersey, says that:

1. That all the allegations contained in paragraphs one, two and three of the second count are hereby made a part of this count just as if the same were repeated herein at length and verbatim.

2. As a result of the premises aforesaid and the carelessness and negligence of the defendants, plaintiff Ruben Peskowitz suffered and sustained many severe internal and external injuries together with many cuts, lacerations, abrasions, contusions

and bruises about the head, arms, legs and body to his great damage.

3. As a result of the premises aforesaid, plaintiff was obliged to expend divers sums and incur divers debts in order to procure medical aid, treatment and attention, drugs, medicinals, etc. in order to cure and heal the injuries which he sustained.

4. As a result of the premises aforesaid, plaintiff was prevented from pursuing his lawful tasks and duties as heretofore.

Wherefore plaintiff Ruben Peskowitz asks damages in the sum of Twenty Five Hundred ($2,500.00) Dollars, together with costs of court on the third count.

FOURTH COUNT

Plaintiff Ruben Peskowitz, the husband of Diana Peskowitz, says that:

1. That all the allegations contained in paragraphs one, two, three, four, five, six, seven and eight alleged in the first count are hereby made a part of this count, just as if the same were repeated herein at length and verbatim.

2. As a result of the premises aforesaid plaintiff Ruben Peskowitz was obliged to expend divers sums and incur divers debts in order to procure medical aid, treatment and attention, drugs, medicinals, x-rays, hospital expenses and nurse attendance, all in an effort to cure and heal the injuries suffered and sustained by his said wife Diana Peskowitz.

3. As a result of the premises aforesaid, plaintiff was deprived and suffered the loss of consortium of his said wife.

Wherefore plaintiff Ruben Peskowitz asks damages in the sum of Five Thousand ($5000.00) Dol-

lars, together with costs of court on the fourth count.

FIFTH COUNT

Plaintiff Dorothy Peskowitz, residing in the City of Passaic, County of Passaic and State of New Jersey, who has been permitted to prosecute this action by her next friend Ruben Peskowitz, says that:

1. She is an infant under the age of twenty-one years to wit, four and one-half years of age, and that she has been permitted to prosecute this cause of action by her next friend Ruben Peskowitz.

2. That on August 2nd, 1926, plaintiff Dorothy Peskowitz was lawfully riding in a certain automobile owned by Ruben Peskowitz and operated by Bessie Peskowitz, which said automobile was lawfully proceeding on and along the certain street and highway known as Vreeland Ave., proceeding in a general southerly direction thereon, said Vreeland Ave. being situate in the City of Paterson, County of Passaic and State of New Jersey.

3. On or about the aforesaid date, defendant corporation was the owner of a certain automobile, which it caused to be operated by its agent and servant Jacobus Kuiper on and along said street and highway aforementioned, said automobile truck proceeding along said street and highway in a general northerly direction.

4. On or about the aforesaid date said defendants did cause said automobile truck to be operated in such a careless, negligent and reckless manner and at such a fast, unreasonable and unlawful rate of speed, so as to cause the same to crash into and against with great force and violence the automobile in which the plaintiff was a lawful occupant.

5. As a result of the premises aforesaid, plaintiff Dorothy Peskowitz suffered and sustained many

internal and external injuries both temporary and permanent in character to her great damage, and did suffer and sustain many cuts, lacerations, contusions, abrasions and bruises about the head, arms, legs and body to her great damage.

6. As a result of the premises aforesaid plaintiff Dorothy Peskowitz was compelled to undergo great pain and agony and torment of both mind and body to her damage and injury.

Wherefore Dorothy Peskowitz by her next friend Ruben Peskowitz, asks damages in the sum of Five Thousand ($5000.00) Dollars, together with costs of court on the fifth count.

SIXTH COUNT

Ruben Peskowitz residing in the City of Passaic, County of Passaic and State of New Jersey, says that:

1. All the allegations contained in paragraphs one, two, three, four, five and six alleged in the fifth count are hereby made a part of this count, just as if the same were repeated herein at length and verbatim.

2. As a result of the premises aforesaid, plaintiff was obliged to expend divers sums and incur divers debts in order to procure medical aid, treatment and attention, in order to cure and heal the injuries suffered and sustained by his said daughter Dorothy Peskowitz.

Wherefore plaintiff Ruben Peskowitz, asks damages in the sum of One Thousand ($1000.00) Dollars, together with costs of court on the sixth count.

SEVENTH COUNT

Bessie Peskowitz residing in the City of Passaic, County of Passaic and State of New Jersey, says that:

1. On August 2nd, 1926, plaintiff was operating a certain motor vehicle on and along a certain

street and highway known and designated as Vreeland Ave., situate in the City of Paterson, County of Passaic and State of New Jersey, proceeding in a general southerly direction thereon.

2. On or about the aforesaid date defendant corporation was the owner of a certain automobile truck which it caused to be operated by its agent and servant Jacobus Kuiper on and along said street and highway as aforementioned, proceeding in a general northerly direction thereon.

3. On or about the aforesaid date, said defendants did cause said automobile truck to be operated in such a careless, negligent and reckless manner, and at such a fast, unreasonable and unlawful rate of speed, so as to cause the same to crash into and against with great force and violence the automobile being operated by plaintiff herein.

4. As a result of the premises aforesaid plaintiff suffered and sustained many internal and external injuries both temporary and permanent in character, and did suffer and sustain many cuts, bruises, lacerations, abrasions and contusions about the head, arms, legs and body. As a further result of the premises aforesaid, plaintiff was obliged to undergo extreme pain and agony and torment of both mind and body and was confined to her bed and home, and will be confined to her bed and home for a long time in the future.

5. As a result of the premises aforesaid, plaintiff was deprived and will be deprived for a long time in the future of her weekly salaries and earnings, in that she is prevented from pursuing her lawful tasks and duties as heretofore.

6. As a result of the premises aforesaid, plaintiff was obliged to expend divers sums and incur divers debts in order to procure medical and surgical aid, treatment and attention, drugs, medicinals,

etc. in order to cure and heal the injuries which she sustained.

Wherefore plaintiff Bessie Peskowitz asks damages in the sum of Five Thousand ($5000.00) Dollars, together with costs of court on the seventh count.

EIGHTH COUNT

Jennie Shapiro, residing in the City of Passaic, County of Passaic and State of New Jersey, says that:

1. She is the wife of Simon Shapiro.

2. On August 2nd, 1926, plaintiff was a lawful occupant in a certain automobile operated by Bessie Peskowitz, on and along a certain street and highway known and designated as Vreeland Ave., situate in the City of Paterson, County of Passaic and State of New Jersey, proceeding in a general southerly direction thereon.

3. On or about the aforesaid date defendant corporation was the owner of a certain automobile truck which it caused to be operated by its agent and servant Jacobus Kuiper on and along said street and highway as aforementioned, proceeding in a general northerly direction thereon.

4. On or about the aforesaid date, said defendants did cause said automobile truck to be operated in such a careless, negligent and reckless manner, and at such a fast, unreasonable, and unlawful rate of speed, so as to cause the same to crash into and against with great force and violence the automobile in which plaintiff was lawfully riding.

5. As a result of the premises aforesaid, plaintiff Jennie Shapiro suffered and sustained many internal and external injuries both temporary and permanent in character, and did further suffer and sustain many cuts, abrasions, contusions, lacerations and bruises about the head, arms, legs and

body to her great damage; and plaintiff herein was compelled to be confined to her bed and home and will be compelled to be confined to her bed and home for a long time in the future to her great damage, and plaintiff was compelled to undergo untold agony, pain and suffering and torment of both mind and body to her great damage and injury.

Wherefore plaintiff Jennie Shapiro asks damages in the sum of Five Thousand ($5000.00) Dollars, together with costs of court on the eighth count.

NINTH COUNT

Simon Shapiro, residing in the City of Passaic, County of Passaic and State of New Jersey, says that:

1. He is the husband of Jennie Shapiro.

2. That all the allegations contained in paragraphs one, two, three, four and five alleged in the eighth count are hereby made a part of this count, just as if the same were repeated herein at length and verbatim.

3. As a result of the premises aforesaid, plaintiff suffered and sustained loss of consortium of his said wife Jennie Shapiro.

4. As a result of the premises aforesaid plaintiff was obliged to expend divers sums and incur divers debts in order to procure medical aid, treatment and attention, drugs, medicinals, x-rays, etc. all in an effort to cure and heal the injuries suffered and sustained by his wife Jennie Shapiro.

Wherefore Simon Shapiro asks damages in the sum of Twenty Five Hundred ($2500.00) Dollars, together with costs of court on the ninth count.

Wherefore damages will be asked on all counts in the sum of Thirty Nine Thousand ($39,000.00) Dollars, together with costs of court.

IRVING L. WERKSMAN,
Attorney for Plaintiffs.

Summons

THE STATE OF NEW JERSEY:

To: Lawrence F. Kramer, Inc., a corporation of New Jersey and Jacobus Kuiper.

(SEAL)

You are summoned to answer the annexed complaint of Diana Peskowitz and Ruben Peskowitz (her husband) and Ruben Peskowitz, Individually, Jennie Shapiro and Simon Shapiro (her husband) Bessie Peskowitz and Dorothy Peskowitz, by her next friend Ruben Peskowitz and Ruben Peskowitz, Individually, in an action at law in the Circuit Court of Passaic County.

AND TAKE NOTICE that unless you file your answer to the said complaint with the Clerk of the Circuit Court at Paterson, within twenty days after the service upon you of this writ and the annexed complaint, the plaintiffs may proceed in said suit and judgment may be entered against you.

Witness, Clifford L. Newman, Judge of our said Circuit Court, at Paterson, aforesaid, this 31st day of August, 1926.

JOHN McCUTCHEON,
Clerk.

IRVING L. WERKSMAN,
Attorney.

PASSAIC COUNTY CIRCUIT COURT

Filed October 18, 1926.

DIANA PESKOWITZ, and RUBEN PESKOWITZ (her husband) and RUBEN PESKOWITZ, Individually, JENNIE SHAPIRO and SIMON SHAPIRO (her husband), BESSIE PESKOWITZ, and DOROTHY PESKOWITZ, by her next friend RUBEN PESKOWITZ, and RUBEN PESKOWITZ, Individually,

Plaintiffs,

vs.

LAWRENCE F. KRAMER, INC. a corporation of New Jersey and JACOBUS KUIPER,

Defendants.

Action at Law.

Answer and Counter-claim of Defendant Lawrence F. Kramer Company.

This defendant having an office in the City of Paterson, County of Passaic and State of New Jersey for answer to the complaint herein states and alleges as follows:

FIRST DEFENSE TO FIRST COUNT

1. This defendant has no knowledge or information sufficient to form a belief as to the first paragraph of the first count.

2. The second paragraph of the first count is admitted, except the allegation that plaintiff was a lawful occupant in the automobile owned by Ruben Peskowitz, as to which matters this defendant has no knowledge or information sufficient to form a belief.

3. The third paragraph is admitted, except that the name of the driver is Harry Kuiper, instead of Jacobus Kuiper as alleged in the complaint.

4. All allegations of fact contained in the fourth paragraph of the first count are denied.

5. The fifth paragraph of the first count is denied.

6, 7, 8 and 9. This defendant has no knowledge or information sufficient to form a belief as to any of the allegations contained in the 6th, 7th, 8th and 9th paragraphs of the first count, except the allegations of said paragraphs that the things therein mentioned were as the result of the premises set forth in the first count, which allegations are denied.

SECOND DEFENSE TO FIRST COUNT

1. Whatever of injury and damage were suffered and sustained by the plaintiff Diana Peskowitz were caused and contributed to by the negligent manner in which the automobile of her husband was driven in and about the business of her said husband by one Bessie Peskowitz the daughter and agent of Ruben Peskowitz, the husband of said Diana Peskowitz.

2. The negligence of Bessie Peskowitz is imputable to Ruben Peskowitz and prevents and precludes the maintenance of an action by Diana Peskowitz, his wife, in this case, consisted of the failure on the part of said Bessie Peskowitz to operate the automobile in which the plaintiff was riding at a reasonable rate of speed and failed to keep a proper lookout as to the traffic ahead of her; failed to make due and timely application of the brakes upon the automobile she was driving, and failed to stop or so guide and direct the automobile of Ruben Peskowitz as to avoid other vehicles lawfully using the highway and otherwise recklessly and negligently operated said car so that the same ran into and against the automobile of this defendant. Furthermore the said Ruben Peskowitz was

guilty of further negligence likewise imputable to his wife Diana Peskowitz, in that he knowingly entrusted his said automobile to a reckless and careless driver, to wit, Bessie Peskowitz.

FIRST DEFENSE TO SECOND COUNT

1. The first paragraph of the second count is admitted, except the allegation that plaintiff was lawfully riding in said automobile, which is denied.

2. The second paragraph of the second count is admitted.

3. The third paragraph of the second count is denied.

4, 5. The fourth and fifth paragraphs of the second count are denied.

SECOND DEFENSE TO SECOND COUNT

Whatever of damages of the character mentioned in the second count were sustained by the plaintiff Ruben Peskowitz were caused by his own negligence in entrusting his automobile to an improper driver who recklessly and negligently drove the same on the business of said Ruben Peskowitz and when he was present, the particulars of which negligence in the operation of said automobile are stated in the second defense to the first count and hereby repeated and made a part hereof.

FIRST DEFENSE TO THIRD COUNT

1. The allegations in paragraphs 1 to 3 inclusive of the first defense to the second count are hereby repeated as an answer to the first paragraph of the third count.

2, 3, 4. This defendant has no knowledge or information sufficient to form a belief as to any of the matters alleged in the 2nd, 3rd and 4th paragraphs of the third count, except the allegation therein made that any of the things mentioned in said 2nd, 3rd and 4th paragraphs were as a result

of the premises mentioned in the complaint, which allegations are denied.

SECOND DEFENSE TO THIRD COUNT

The second defense to the second count is hereby repeated as a second defense to the third count.

FIRST DEFENSE TO FOURTH COUNT

1. Paragraphs 1 to 8, inclusive of the first defense to first count are repeated as an answer to the first paragraph of the fourth count.

2-3. This defendant has no knowledge or information sufficient to form a belief as to any of the matters alleged in the second and third paragraphs of the fourth count, except the allegation that the things therein mentioned were as a result of the premises mentioned in the complaint, which is denied.

SECOND DEFENSE TO FOURTH COUNT

The second defense to the second count is repeated as a second defense to the fourth count.

FIRST DEFENSE TO FIFTH COUNT

1. This defendant has no knowledge or information to form a belief as to the matters alleged in the first paragraph of the fifth count.

2. The second paragraph of the fifth count is admitted, except the allegation that plaintiff was "lawfully riding" at the time and place mentioned, which is denied.

3. The third paragraph of the fifth count is admitted.

4. The fourth paragraph of the fifth count is denied.

5-6. This defendant has no knowledge or information sufficient to form a belief as to any of the matters alleged in the 5th and 6th paragraphs of the complaint, except the allegations that the things

therein mentioned were as a result of the premises stated in the complaint, which is denied.

FIRST DEFENSE TO SIXTH COUNT

1. The allegations of the defense to the fifth count are repeated as an answer to the first paragraph of the sixth count.

10 2. This defendant has no knowledge or information sufficient to form a belief as to the allegations of the second paragraph of the sixth count, except that the things therein mentioned were as a result of the premises alleged in said sixth count, which is denied.

SECOND DEFENSE TO SIXTH COUNT

The second defense to the second count is repeated as a second defense to the sixth count.

20 FIRST DEFENSE TO SEVENTH COUNT

1. The first paragraph of the seventh count is admitted.

2. The second paragraph of the seventh count is admitted.

3. The third paragraph of the seventh count is denied.

4-5-6. The allegations of the 4th, 5th and 6th paragraphs of the seventh count are denied, except that this defendant has no knowledge or information sufficient to form a belief as to any injuries sustained by plaintiff Bessie Peskowitz.

SECOND DEFENSE TO SEVENTH COUNT

Whatever of injury and damage were suffered and sustained by Bessie Peskowitz at the time and place mentioned in the seventh count of the complaint were caused and contributed to her by her own negligence in that she recklessly, carelessly and negligently drove the automobile in which she was riding into and against the automobile of this defendant, the particulars of her negligence in that

regard being stated in the second defense to the first count, which particulars are hereby repeated and made a part of this second defense to the seventh count.

DEFENSE TO EIGHTH COUNT

1. This defendant has no knowledge or information sufficient to form a belief as to the allegations of the first paragraph of the eighth count.

2. The second paragraph of the eighth count is admitted.

3. The third paragraph of the eighth count is admitted.

4. The fourth paragraph of the eighth count is denied.

5. The fifth paragraph of the eighth count is denied.

DEFENSE TO NINTH COUNT

1. The first paragraph of the ninth count is admitted.

2. Paragraphs 1 to 5, inclusive, of the first defense to eighth count are repeated as an answer to the second paragraph of the ninth count.

3. The third paragraph of the ninth count is denied.

4. This defendant has no knowledge or information sufficient to form a belief as to any of the allegations contained in the fourth paragraph of the ninth count, except the allegation that any of the things herein mentioned were as a result of the premises mentioned in the complaint, which are denied.

For a counterclaim against the defendants Ruben Peskowitz and Bessie Peskowitz this defendant alleges as follows:

1. On August 2nd, 1926, the automobile truck of this defendant was being operated on and along

Vreeland Avenue in the City of Paterson, County of Passaic and State of New Jersey.

2. On said date an automobile owned by Ruben Peskowitz and driven by his agent Bessie Peskowitz was also being driven on said Vreeland Avenue in the opposite direction from this defendant's automobile.

3. At or about Seventeenth Avenue in said City of Paterson, County of Passaic and State of New Jersey the automobile of this defendant started to turn in Seventeenth Avenue while the automobile of the defendant Ruben Peskowitz was still at some distance from said intersecting street and Seventeenth Avenue.

4. As the automobile of this defendant was turning into Seventeenth Avenue the automobile of the plaintiff Ruben Peskowitz driven by his agent Bessie Peskowitz, was driven recklessly, carelessly and negligently into and against the automobile of this defendant with great force and violence and at a great and unlawful rate of speed. Furthermore said Bessie Peskowitz failed to maintain a proper lookout as to the conditions of traffic ahead of her; drove plaintiff's said automobile when not equipped with proper brakes and failed to make timely application of such brakes as were upon said car.

5. As a result of said negligence causing the collision aforesaid this defendant was deprived of the use of its automobile and was obliged to spend divers sums and incur divers debts for the repair of its said automobile.

WHEREFORE, this defendant demands damages against the plaintiffs Ruben Peskowitz and Bessie Peskowitz in the sum of $1500.00.

KELLOGG & CHANCE,
Attorneys of Defendant,
Lawrence F. Kramer Company.

PASSAIC COUNTY CIRCUIT COURT

Filed October 23, 1926

DIANA PESKOWITZ, and RUBEN PESKOWITZ (her husband) and RUBEN PESKOWITZ, Individually, JENNIE SHAPIRO and SIMON SHAPIRO (her husband), BESSIE PESKOWITZ, and DOROTHY PESKOWITZ, by her next friend RUBEN PESKOWITZ, and RUBEN PESKOWITZ, Individually, *Plaintiffs,* *vs.* LAWRENCE F. KRAMER, INC. a corporation of New Jersey and JACOBUS KUIPER, *Defendants.*	*Action at Law.* *Reply to Answer and Answer to Counter Claim of Defendant Lawrence F. Kramer Company.*

Plaintiffs by way of reply to the answer filed by the defendants in the within cause say that:

AS TO FIRST DEFENSE TO FIRST COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO SECOND DEFENSE TO FIRST COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO FIRST DEFENSE TO SECOND COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO SECOND DEFENSE TO SECOND COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO FIRST DEFENSE TO THIRD COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO SECOND DEFENSE TO THIRD COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO FIRST DEFENSE TO FOURTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO SECOND DEFENSE TO FOURTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO FIRST DEFENSE TO FIFTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO SECOND DEFENSE TO FIFTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO FIRST DEFENSE TO SIXTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO SECOND DEFENSE TO SIXTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO FIRST DEFENSE TO SEVENTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO SECOND DEFENSE TO
SEVENTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO FIRST DEFENSE TO EIGHTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO SECOND DEFENSE TO
EIGHTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO FIRST DEFENSE TO NINTH COUNT

Plaintiffs deny each and every allegation contained therein.

AS TO SECOND DEFENSE TO NINTH COUNT

Plaintiffs deny each and every allegation contained therein.

ANSWER TO COUNTER CLAIM

Plaintiffs Ruben Peskowitz and Bessie Peskowitz in answer to the counter-claim filed by defendant Lawrence F. Kramer Company, say that:

1. Plaintiffs admit the allegations contained in paragraph one.

2. Plaintiffs deny each and every allegation contained in paragraph two.

3. Plaintiffs deny each and every allegation contained in paragraph three.

4. Plaintiffs deny each and every allegation contained in paragraph four.

5. Plaintiffs deny each and every allegation contained paragraph five.

FIRST SEPARATE DEFENSE TO COUNTER CLAIM

1. Plaintiffs were not negligent.

2. Defendant Lawrence F. Kramer Company operated said automobile truck by its agent and servant in such negligent manner being the sole cause for the collision referred to in said counter-claim.

3. Plaintiffs were not guilty of negligence.

4. Defendant's negligence was the sole cause of the collision.

IRVING L. WERKSMAN,
Attorney for Plaintiffs.

Rule for Judgment

PASSAIC COUNTY CIRCUIT COURT

Filed, April 17, 1928.

DIANA PESKOWITZ, and RUBEN PESKOWITZ (her husband) and RUBEN PESKOWITZ, Individually, JENNIE SHAPIRO and SIMON SHAPIRO (her husband), BESSIE PESKOWITZ, and DOROTHY PESKOWITZ, by her next friend RUBEN PESKOWITZ, and RUBEN PESKOWITZ, Individually, *Plaintiffs,* *vs.* LAWRENCE F. KRAMER, INC. a corporation of New Jersey and JACOBUS KUIPER, *Defendants.*	*Action at Law.* *Rule for Judgment.*

This case was tried before Judge Newton H. Porter with a jury at the Passaic Circuit on April 12, 1928.

The jury rendered a verdict against the defendants and in favor of Diana Peskowitz one of the plaintiffs for five thousand ($5,000) dollars and a verdict of no cause of action in behalf of the remaining plaintiffs and no cause of action on the counterclaim filed in behalf of Lawrence F. Kramer, Inc., and Jacob Kuiper that judgment be entered in accordance with the above.

NEWTON H. PORTER,

Judge.

Judgment

PASSAIC COUNTY CIRCUIT COURT

DIANA PESKOWITZ, and RUBEN PESKOWITZ (her husband) and RUBEN PESKOWITZ, Individually, JENNIE SHAPIRO and SIMON SHAPIRO (her husband), BESSIE PESKOWITZ, and DOROTHY PESKOWITZ, by her next friend RUBEN PESKOWITZ, and RUBEN PESKOWITZ, Individually,

Plaintiffs,

vs.

LAWRENCE F. KRAMER, INC. a corporation of New Jersey and JACOBUS KUIPER,

Defendants.

Action at Law.

Judgment.

This action was tried before Judge Newton H. Porter, with a jury, in the presence of counsel of the respective parties, at the Passaic County Circuit on April 10th, 11th and 12th A. D., 1928.

The cause having been heard and submitted to the jury they returned their verdict as follows: Five thousand dollars ($5,000) in favor of the plaintiff Diana Peskowitz.

Whereupon it is adjudged that the plaintiff Diana Peskowitz recover of the defendant Lawrence F. Kramer, Inc., a corporation of New Jersey, and Jacob Kuiper, the sum of five thousand dollars ($5,000).

Judgment entered and signed April 17, 1928, at 3:15 P. M.

Action No. 10730. Docket K, Page 18.

NEWTON H. PORTER,

Judge.

PASSAIC COUNTY CIRCUIT COURT

Filed April 27, 1928.

DIANA PESKOWITZ, and RUBEN PESKOWITZ (her husband) and RUBEN PESKOWITZ, Individually, JENNIE SHAPIRO and SIMON SHAPIRO (her husband), BESSIE PESKOWITZ, and DOROTHY PESKOWITZ, by her next friend RUBEN PESKOWITZ, and RUBEN PESKOWITZ, Individually, *Plaintiffs,* *vs.* LAWRENCE F. KRAMER, INC. a corporation of New Jersey and JACOB KUIPER, *Defendants.*	*Action at Law.* *Notice of Appeal.*

To: Irving L. Werksman, Attorney for Plaintiffs.

Sir.:

TAKE NOTICE that the defendants appeal to the Court of Errors and Appeals of New Jersey from the judgment entered in the above entitled cause in so far as the same is against the defendants, and that they will hereafter, in compliance with law and the rules of court in such case made and provided, serve and file their grounds of appeal.

Dated, April 25th, 1928.

Respectfully yours,

KELLOGG & CHANCE,

Attorneys for Defendants.

Endorsed:

Service acknowledged this 26th day of April, 1928.

IRVING L. WERKSMAN,

Attorney for Plaintiffs.

NEW JERSEY COURT OF ERRORS AND APPEALS

DIANA PESKOWITZ, and RUBEN PESKOWITZ (her husband) and RUBEN PESKOWITZ, Individually, JENNIE SHAPIRO and SIMON SHAPIRO (her husband), BESSIE PESKOWITZ, and DOROTHY PESKOWITZ, by her next friend RUBEN PESKOWITZ, and RUBEN PESKOWITZ, Individually, *Plaintiffs-Respondents,* *vs.* LAWRENCE F. KRAMER, INC. a corporation of New Jersey and JACOB KUIPER, *Defendants-Appellants.*	*Action at Law.* *On Appeal from Passaic Circuit Court*

GROUNDS OF APPEAL

The defendants-appellants, Lawrence F. Kramer, Inc., and Jacob Kuiper, state the following grounds of appeal in this cause.

1. The trial judge erred in refusing to charge the second request to charge as submitted by the defendant, which was as follows: "Contributory negligence on the part of Ruben Peskowitz would bar recovery by both him and Diana Peskowitz, his wife," to which refusal exception was duly taken and noted.

2. The trial court erred in refusing to charge the defendants' third request to charge which was as follows: "If Bessie Peskowitz was operating the automobile of Ruben Peskowitz as his agent,

and was guilty of negligence contributing to the accident, neither she, nor Ruben Peskowitz, nor Diana Peskowitz are entitled to a verdict in this case," to which request exception was duly taken and noted.

3. The trial judge in the charge to the jury erroneously charged the jury as to the effect of negligence on the part of Bessie Peskowitz, the language of the court in this regard being: "and if you find that there was negligence on the part of the driver of that car, that will bar the recovery of Ruben, the father, under the circumstances that I have cited, if you find the fact to be that she was driving it for him as his agent, but, as I have stated, it will not bar the recovery of the mother Diana, nor Dorothy nor Jennie Shapiro, because any negligence of the driver cannot be imputed to other people, other than the persons for whom she was acting. In other words Mrs. Peskowitz and the other children and the other occupants, were invited guests, I think, under the testimony and under these circumstances any negligence of the driver of the car in which they are guests is not their negligence and cannot be imputed to them, so that if you find negligence on the part of the defendant Kuiper, no matter how you find as to Bessie, as to her negligence, there must be a recovery for Diana, Dorothy and Jennie Shapiro," and "But if you find that there was negligence on the part of Mr. Kuiper, and also negligence on the part of Bessie, then, as I have said, the other may recover," to which portion of the court's charge exception was duly taken and noted.

4. The trial judge erred in that part of his charge wherein speaking of damages he said as follows: "All of them are entitled to the sum you think is proper to compensate them for the pain

and suffering which they have undergone and may undergo in the future and for such bodily injury, or injuries, of a permanent or temporary character as they may have received," in that, at that place the court's charge assumed liability and omitted to indicate that negligence on the part of the defendant's driver must appear before such compensation is proper, to which portion of the court's charge exception was duly taken and noted.

5. The trial court erred in his charge to the jury wherein speaking of the effect of Bessie Peskowitz's negligence, if any, the court in substance said that there must be a recovery for Diana even though Bessie were negligent, if they found that Kuiper, the driver of the Kramer truck was negligent, to which portion of the court's charge exception was duly taken and noted.

6. The trial court erred in charging the jury in substance that it was for them to find whether Bessie was acting as the agent of Ruben Peskowitz at the time of the accident, the basis of this objection being that the evidence is so clear and undisputed that she was the agent that there was no jury question on that subject, to which portion of the court's charge exception was duly taken and noted.

7. The trial judge erroneously ruled to the effect that the husband's negligence would not bar his wife and that the law as laid down in the case of *Goodenough* vs. *P. R. R. Co.* in 55 N. J. L. has been superseded by subsequent statutes to which ruling exception was duly taken and noted.

Respectfully yours,

KELLOGG & CHANCE,
Attorneys of Defendants-Appellants.

Dated, May 23rd, 1928.

Appearances

To: Irving Werksman, Attorney of Plaintiffs-Respondents.

Service acknowledged this 23rd day of May, 1928.

IRVING L. WERKSMAN,
Attorney of Plaintiff-Respondents.

PASSAIC COUNTY CIRCUIT COURT

Filed April 24, 1928.

DIANA PESKOWITZ, and RUBEN PESKOWITZ (her husband) and RUBEN PESKOWITZ, Individually, JENNIE SHAPIRO and SIMON SHAPIRO (her husband), BESSIE PESKOWITZ, and DOROTHY PESKOWITZ, by her next friend RUBEN PESKOWITZ, and RUBEN PESKOWITZ, Individually,
Plaintiffs,
vs.
LAWRENCE F. KRAMER, INC. a corporation of New Jersey and JACOBUS KUIPER,
Defendants.

Action at Law.

Paterson, N. J., April 10, 1928.

Before: Hon. Newton H. Porter, *J* and a Jury.

Appearances:

Irving L. Werksman, Esq., (James M. Dunn, Esq., of Counsel), for the Plaintiffs.

Messrs. Kellogg & Chance, (by R. Robinson Chance, Esq.), for the Defendants.

A jury was duly empaneled and sworn.

Counsel for the respective parties opened the case to the jury.

DAVID H. MENDELSOHN, M.D., sworn.

Direct examination by Mr. Dunn:

Q Doctor, you are a licensed physician, licensed to practice in the State of New Jersey, are you not? A I am.

Q Have you been for how long? A Seventeen years.

Q Connected with any institutions, doctor? A I am attending surgeon to the Barnert Hospital.

Q Have been for how many years? A Oh, about ten years.

Q Doctor, on or about August 2, 1926, did you have occasion to see Diana Peskowitz, and any of the other members of her family? A Yes.

Q When did you first see them? A I saw them on August 2, 1926, around noon time.

Q Now, then, whom did you see on that occasion, doctor? A I saw them all that day.

The Court. What date?

The Witness. August 2nd.

Q About noon time? A About noon time.

Q Have you the names there? A Yes.

Q Just read them. A I saw Diana Peskowitz, R. Peskowitz,—I think that "R" stands for Ruben; Bessie Peskowitz, and Mrs. J. Shapiro, a daughter, —a married daughter of Mr. and Mrs. Peskowitz.

Q Where did you see them, doctor? A I saw them in the hospital and in my office.

Q Let's start, take Diana Peskowitz first. What was her condition when you first saw her, doctor? A Mrs. Diana Peskowitz was in very severe shock and had a transverse fracture of the humerus at the

lower third; this bone is called the humerus (indicating).

Q Indicating the bone between the shoulder and the elbow, doctor? A Yes.

Q Go ahead, doctor, A I have pictures of that.

Q Go ahead, doctor. A This fracture, as I say, was a transverse and was at the lower third of this bone, and the fragments of the bones were very markedly displaced, and were overriding. In addition to that, she had a fracture of the seventh rib on her left side of the chest, with a pleurisy, which we call "traumatic pleurisy," an injury to the pleura, a pleurisy, an inflammation of the pleura due to an injury,—traumatic pleurisy of her left side. Besides her shock she had many bruises and abrasions over her chest and leg and body. She had a severe black and blue discoloration which ran from the left elbow upward to and including the shoulder region. She had a severe contusion of her left knee, with swelling of that knee, and later on developed fluid there due to a traumatic synovitis, inflamamtion of the lining of that knee, due to the injury. She had a severe injury to her left sacro-iliac joint.

Q Just a minute, doctor. Just point out to the jury, if you will, on one of the court attendants. Just indicate, if you will, doctor, to the jury where that is. A You mean, the hip?

Q Sacro-iliac joint, or the hip. A She had an injury to the sacro-iliac joint. I will have to raise the coat,—sacro-iliac joint, about right here (indicating).

Q Indicating a point, for the purpose of the record, where, doctor? A About the first third of the circumference of the back, beginning with the left side, going from left to right, the sacro-iliac

joint runs along this way. She had tremendous injury to her left hip. This sacro-iliac joint unites two bones,—the sacrum and the ilium. The ilium is that big hip bone. Her sacrum is the under support of the spine. These two bones are joined together with a joint. We call that joint the sacro-iliac joint. She had an injury to that joint and an injury to the left hip. Her entire left leg was black and blue and bruised. Her left knee, as I have said, was injured and swollen, and she had fluid in there.

The Court. Is there going to be any objection to these films?

Mr. Chance. I do not suppose there is, but I will tell better when I hear what he says about them.

The Court. Better ask him about the films, Mr. Dunn.

Q What are these plates, doctor? A Sir?

Q What are these plates, doctor? A These are the x-ray pictures of Mrs. Peskowitz's arm.

Q Showing the conditions that you have just described, doctor? A Yes, showing the site of the fracture.

Mr. Chance. Who took these, before we get that far?

The Witness. These were taken by the X-ray Department of the Barnert Hospital. Her name is on the—

Q Under your supervision, doctor? Under your orders? A Under my orders. We are never in the X-ray Department, we cannot x-ray our patients; we are on the surgical division.

Q Are these plates examined by you after they were taken? A They are examined by the roentgenologist who gives a written report, which is this pink report. Do you want this?

Mr. Chance. No, I do not want you to read from the pink sheet. I am going—

Mr. Dunn. Let's see the first two.

The Court. Let him see them all at once, while we are on this subject.

A (Continuing) X-rays of her forearm is, as you see them.

The Court. No, no; just let counsel see the x-ray. We are only concerned now with their admissibility.

Mr. Chance. No objection.

The Court. All right.

Q All right, go on and demonstrate what they are.

The Court. I think it had better be marked first, so that they may be identified, for the record.

Q Hand them to the stenographer.

(X-RAYS MARKED PLAINTIFF'S EXTS. P-1, P-2, P-3, P-4 and P-5.)

Q Start with P-1, doctor, the order they are marked.

The Court. Suppose you use one at a time.

The Witness. Your Honor, the reason I use these two together is because they represent—well, you can use them one at a time. This shows—

Q Referring to Exhibit P-1. A P-1. This shows the location of the fracture of the lower third of this humerus. As you see, this is a transverse fracture, and the lower fragment from here to the elbow joint is markedly displaced this way, backward; and there is this angulation and overriding of the upper fragment.

Q By transverse, what do you mean, doctor? A Straight across. Of course, it is not a perfectly straight line. We do not use absolutely geometric lines in medicine, but it appeals to us as straight, and we call it straight. Transverse fracture. Now, this is the same picture—

Q P-2. A P-2. This is the same view as the first exhibit, only that it is taken instead of antero-posteriorly, this way, the rays are shot laterally so that it is called a lateral view of the same fracture, showing also the amount of overriding. P-3 shows the same fracture after attempting to reduce it, only that I should look—turn it this way for you to get the right alignment, after starting to reduce it under—ether also was given—anaesthetic to set that fracture. You see, it was impossible to bring that fracture back in absolutely perfect alignment, because of a certain amount of tissue. You see, when a bone breaks that way it pierces the muscles adjoining it, and as you set it back it doesn't wriggle itself out of the whole of the muscle that is about it, but very often takes a small part of tissue, that tissue, with it, or muscle, and in doing that it is almost impossible to get absolutely perfectly straight alignment with it, and if we can get a certain degree of opposition that way, we are quite satisfied that healing will take place, although with a certain amount of deformity. That is, as I said, an antero-posterior view. By that, I mean the arm was held this way. You see, the elbow joint here is fixed; the patient was held like this, in plaster. This shadow that you see is a plaster cast. And the rays of light were shot through, the plate lying here, and the picture taken from above downward, together with the lateral view, with the picture this way, and the rays being shot from the side, shows the position of these bones from a lat-

eral view. And if you compare the two lateral views, you see that we have gotten some reduction, and we are satisfied that when callus will set in around here, that there is a certain amount of union, and usefulness will return there; unless we cut down to the bone, through the muscle, to actually sew the bones together, edge to edge, we cannot always expect a perfect alignment of bones. So much for her fracture of the humerus. This x-ray picture, P-5, will show you the fracture of her seventh rib at this point. You do not see the first ribs above the clavicle. This is 1, 2, 3, 4, 5, 6 and 7, tracing it down; this is the fracture (indicating).

Q Now, about how long did you continue to treat her, doctor? A I treated Mrs. Peskowitz from the date of her injury to some time in November. If you will permit me (referring to memoranda), November 20, 1926. She was in the hospital from the 2nd to the 11th, ten days, inclusive, of course.

Q Doctor, are those conditions which you have described, and which you observed during your treatment—are they painful conditions? A Yes, she suffered a great deal of pain with her arm and a great deal of pain with her chest. She had great difficulty in her breathing, and the broken rib with the pleurisy there made her wince; she cannot take a deep breath, like we usually breathe. That condition still persists. She was unable to move around or walk about on account of her hip and knee contusions. She was unable to help herself with the arm on account of the fracture, unable to breathe normally on account of the fractured rib and the pleurisy. She was very sick for a week or so, and she was very nervous.

Q Doctor, have you had occasion to examine her recently? A Yes.

Q What have you to say as to her present condition? A Well, to begin with, she is still quite nervous, and is continually—and has been continually—complaining of pain in her arm, especially when the weather is damp or rainy, and she is unable to raise it like she does the other arm. She has pain in her knee every time the weather is changeable, and is not able to walk or bend or stoop with the amount of use that she is accustomed to, or has been accustomed to always or before she had this accident to her hip joint and knee. She has a shortening of that forearm. You can readily understand why that would be. Owing to the angulation of the bone, in this injury, it is natural that this distance, not going in a perfectly straight line, as it should, must necessarily take up space the other way, and that gives her a permanent shortening of the forearm.

Q Doctor, have you made— A (Continuing.) It may not be very much, in measurement, but it is permanent shortening.

Q Are you able to ascertain her permanent disability, if there is any, doctor? A In her arm?

Q In the arm, or otherwise, in terms of totality —what you can tell us about that? A It would be too much for me to measure total on everything at one time.

Q Suppose you take the arm. To what extent is the arm incapacitated, in your opinion? A Well, I should say she has about 25 per cent. disability in her arm.

Q 25 per cent. disability in her arm? A 25 per cent. to 30 per cent.

Q You mean, 25 per cent. loss of the use of the arm? A There is to the normal function of the use of the arm, about that loss. And as far as the knee and the hip are concerned, I should say that

she has about a 30 per cent. handicap there, when it comes to walking and bending and stooping. As far as her pleurisy is concerned, her traumatic pleurisy, that is absolutely permanent, because an inflamed pleura always heals with adhesions, and every once in a while she will get a sudden stitch in the side. The pains may commence during the morning and last all through to the night. Those adhesions that form, unite the pleura firmly in the chest and every movement of the chest consequently affects it, and this condition will always remain permanently, so that there is no way of removing that.

Q Doctor, how long was this arm in a cast? I do not know whether you mentioned that, or not. A The cast—the arm was in a cast about six weeks and she was given electricity and massage and passive motion in my office for quite a long while until, as I say, she was discharged November 20, 1926.

Q Now, doctor, with reference to her case, what was your bill for services to her, or for her? A I haven't my bill here, but I think it was—six hundred, was it? or five hundred?—or was that including everything? Maybe I have a copy of it; I am not sure.

Q I think I have it, doctor. A Pardon me. I think I can give it to you. Yes, $535.00 was her bill—no, $565.00, pardon me—$565.00 was her bill.

Q For the treatment of Mrs. Diana Peskowitz? A Yes.

Q Was that a reasonable charge for the services rendered, doctor? In your opinion, was that a reasonable charge? A I think it is very reasonable.

Q Now, what was the next one you mentioned, doctor? A The next person I treated, you mean?

Q Well, any of the names. A Mr. Reuben Peskowitz.

Q Did you treat him at the same time? A Yes.

Q What were his injuries? A He had a deep cut—a deep laceration or cut over the dorsum of his right hand. This is the dorsum, the back of his right hand. He had a laceration of the tip of the right ring finger, through here. He had severe abrasions of the left shin and the left knee. I only saw him twice, and he then went to his doctor in Passaic.

Q What were your charges for him, doctor? A My charges for him were $15.00.

Q Was that a reasonable charge for the services rendered? A It was a very reasonable charge.

Q Whom else did you treat, doctor? A Then I treated Bessie Peskowitz. Bessie Peskowitz had two long lacerations over the calf of the left leg and bruises of the left leg with black and blue—the entire leg was black and blue, and over the calf of the leg she had two lacerations. Those wounds were cleansed, given first aid. Her bill was $10.00.

Q Was that charge a reasonable charge for the services rendered, doctor? A I think that was a very reasonable charge.

Q Whom did you next treat? A I treated Mrs. J. Shapiro. She had two lacerations over the dorsum of her left hand, over the back of her left hand; two puncture wounds of the left forearm. She had a great haemotoma over the left temporal region, great big collection of blood, from the blow that she received there with abrasion over it.

The Court. Where was that?

The Witness. On the left side, left temporal region.

A (Continuing.) She was given first aid; wounds were disinfected. She received a bill of $10.00.

Q Was that a reasonable charge for— A I think that was a very reasonable charge.

Q Did you treat any one else? A Those were all of the people who were injured in that car that I treated.

The Court. How about Dorothy?

The Witness. I did not treat Dorothy.

Q Did you treat Dorothy? A I think I saw Dorothy, I am not sure, but I do not think I treated her. I think they took her to some physician in Passaic.

Q Doctor, do you know who treated those cases after you finished treating them? A I think it was Dr. Koven, of Passaic.

Q Was that on your recommendation? A Well, he was their family doctor, and they went to him.

Mr. Dunn. That is all. You may take the witness.

Cross examination by Mr. Chance.

Q What is the date of the last X-ray that you took of any of those conditions that you have been telling us about? A Well, I cannot tell you the date, but these pictures were taken after she was in the cast, so it must be at least—well, it would surely *be* before she left the hospital.

Q No way for you tell the date? A No, I haven't any; it was probably before she left the hospital.

The Court. Isn't the date on them?

The Witness. On some of them, are; this was August 6th, but this one does not show the date.

The Court. August 5th on one, you have got your finger on it.

The Witness. August 2nd, that is the date of the injury.

Q This one was taken the date of the injury? A That is right.

Q That was taken before you set the bone, wasn't it? A That is right.

Q How about this one? A This one was taken August 6th.

Q That was after you set the bone? A Yes, when she was in plaster.

Q How about this one? A This was taken—

Q That was before it was set? A That was before it was set, yes.

Q Take this one. A That is the lateral view of the same thing. This was after the setting. Does that give the date here? August 6th, yes.

Q What was the last date that you treated any of these people? A. Well, those that I mentioned that I seen but once, that was the last time I treated them, on that date, but Mrs. Peskowitz was the only one that I treated all of the way through.

Q What was the last date that you saw Mrs. Peskowitz? A November 20th.

Q Of what year? A 1926. That is, that was not the last time I saw her. That has been the last time that I treated her. I discharged her, but I have seen her off and on since then.

Q Have you treated her for any of these conditions in any way, in any other accident? A No.

Q Have you treated her for any other conditions, with respect to any other accident? A I never knew these people until the day of the accident. They live in Passaic.

Q When did you find out that you were coming to court, on this case?

Mr. Dunn. I object, irrelevant and immaterial.

The Court. I will allow it. It may be.

A I was told Sunday that their—no—I was told to be ready for yesterday; I was told on Thursday, I think, that the court—that the trial will come on about Monday.

Q Yes, but when did you know that there was a case in court? A Thursday.

Q From the time that you last saw these people professionally, in 1926, all of the last year, and up until last Thursday, was the first that you knew that there was a case in court? A No, no; I don't get what you mean. I knew that they had counsel, I knew that, yes. I didn't understand your question.

Q When did you know the lawsuit was pending? When did you first learn that? A Oh, I don't know—several months after the accident, I knew that. I first found that out, if I am not mistaken—I first found that out when I received a letter from Mr. Werksman, asking me for the diagnosis of what I treated Mrs. Peskowitz for. I think that was the first.

Q You have no recollection as to the date of that? A No. Perhaps Mr. Werksman has; I have not.

Q Well, since you received that letter, have you been looking over your records from time to time, so as to keep this matter fresh in mind, so that when you went into court you would be able to give the details? A No, I haven't referred to this case, excepting as you saw me referring to my notes now.

Q All of those details that you have given to us have been out of your mind from the time that you gave that diagnosis to Mr. Werksman up until last Thursday, have they? A Well, I have never car-

ried them around in my mind; I have never thought of them.

Q Without the use of the red card that you have referred to on your direct examination, could you detail these injuries? A It would be impossible. I can not remember that, for I see too many of these injuries to remember any one injury. I have to keep a record of them. These records are kept every day.

Q Then the testimony that you have given to us is based exclusively upon your recollection as refreshed by the red cards, is it?

Mr. Dunn. I object to the question, if Your Honor please, as being irrelevant and immaterial.

Mr. Chance. I guess it is material for this jury to find out whether he is imagining these things or making them up, where he gets them from.

Mr. Dunn. That remark is not necessary, Mr. Chance.

The Court. He has answered it, hasn't he?

A These records are taken every day; they are bedside records and progress records on the patient.

Mr. Chance. I ask that be stricken out as not responsive.

The Court. That is not the question.

Mr. Chance. I ask it be stricken out.

The Court. Strike it out.

Mr. Chance. Read the question.

Q (As repeated by stenographer.) Then the testimony that you have given to us is based exclusively upon your recollection as refreshed by the red cards, is it? A Yes.

Q May I see the card with respect to Shapiro—Mrs. Shapiro? How many times did you see this

party? A That is not hers; Mrs. Shapiro is on top.

Q How many times did you see her? A It is on the card.

Q You do not remember, without the card? A I cannot remember without the card, unless—

Q Now, how about the card for Reuben? A Reuben Peskowitz?

Q Reuben Peskowitz, yes; how many did you see him? A Twice, it says, on that card.

Q What is your charge for one visit? A First aid was $10.00, that is my office visit, and treating it was $10.00.

Q Would your observation of this case of this Diana Peskowitz' arm be such as to tell you whether an X-ray taken at the present time would be helpful in forming a proper diagnosis of the present condition? A It would make no difference if she takes another picture. The picture will show what she has there now.

Q After a bone has been broken and set, how long a time is it necessary before the union becomes so firm that things subsequently done to the arm would change the feature of it by the (inaudible) loosen it from its setting? A I did not get your question.

Q Well, the last date that any of these pictures was taken apparently is August 6, 1926, just a few days after the accident—four days after the accident; is that right? A Yes.

Q Well, is it impossible that the lady may have done something which would change the position of these bones so that these X-rays would not be proper ones for you to use in pointing out to the jury the present condition?

Mr. Dunn. Now, I object to the question. This witness was asked about these X-rays as

showing the condition as it existed at that time.

The Court. And he also testified as to her present condition.

Mr. Chance. And pointed it out with these X-rays.

Mr. Dunn. Withdraw the objection.

The Court. That makes it proper.

A It is absolutely impossible for her to have changed that position, remaining as she was in that position, in a plaster of paris cast; she could not change that position. Those bones are held just in that position, until the bones are united, which takes about eight weeks after which time the cast is removed.

Q When you were first told that the case was going to court did you recommend that further X-rays be taken? A No.

Q Was the reason for that fact that you thought that the X-rays taken immediately after the accident would make a much more serious-looking condition than those taken subsequently? A No.

Q Are you related by blood or marriage to any of the parties in this case— A No.

Q —or the attorneys? A No.

Q How many times in the last year have you testified in court for cases in which Mr. Werksman appears as the attorney of record? A I haven't ever testified for Mr. Werksman, as this is the first case that I have ever testified that he is interested in.

Q How about Mr. Dunn? A For Mr. Dunn, I think I have testified twice in my whole life, or three times.

Q Is there anything that you omitted to tell us on your direct examination that is the matter with any of these people? A No.

Q You don't think you left out anything? A If I haven't it on the card, they are out of luck; that is all.

Q And without the card, you would not be able to detail these conditions, would you? A I would not try to, and swear that I would tell the truth.

Mr. Chance. That is all.

Re-direct examination by Mr. Dunn.

Q Doctor, in those two cases that you testified, wherein I was concerned, were you for me or against me? A I was against you.

Q That is all; probably for Mr. Chance then.

Re-cross examination by Mr. Chance.

Q Did the fellow win that you did testify for? A I never wait for that answer; I left, as I am leaving right now.

Q Did they telephone you, Doc? A No, I am never interested in the verdict.

SIMON SHAPIRO, sworn.

Mr. Chance. I have Dr. McGinnis here. I wonder if we could bring him in out of the normal order?

Mr. Dunn. No objection.

(Witness withdrawn.)

BRYAN C. McGINNIS, M.D., sworn for defendants, out of turn, by consent of counsel.

Direct examination by Mr. Chance.

Q Doctor, you are a duly licensed practicing physician of this state?

Mr. Dunn. I will admit the doctor's qualifications.

A I am.

Mr. Chance. Thanks.
Mr. Dunn. Welcome.

Q At my request, did you make an examination of this Diana Peskowitz, who is one of the plaintiffs in this suit? A I did.

Q When? A Yesterday afternoon.

Q Will you tell the court and jury from that examination what you find as to her present condition? A I found that she was complaining very severely of tenderness of the left arm. There was—scarcely could touch it; she complained of pain on the left side. The movement of the elbow was—the elbow could be moved in a normal way, normal condition, but with great care. She complained of her back and shoulders and complained of the left knee—I think it was the left knee was a little larger than the right one. The symptoms—or the *observation* symptoms were purely *ob*jective, except for the arm, and the arm seemed to be swollen and very sensitive.

The Court. And the knee?
The Witness. And the knee.

Q Did you mean—you said "objective"; did you mean objective? A Something that you could see, feel or hear. That was about all there was, except she was very nervous, and complained, as I say, of pain in general, and weakness.

Q Now, did you see any objective symptoms which gave a proper basis for a conclusion as to whether or not there was present the things that she complained of? A Outside of the swelling of the left arm, the seeming swelling to the left knee, there was no other that I could ascertain.

Q What is your opinion as to the value of X-rays taken four days after the happening of an injury which amounts to a breaking of an arm as com-

pared with X-rays taken a year after, we will say, as to showing the permanent condition which results from the accident? A The net result is the thing that the surgeon strives for. He does not care so much for the extent of the injury, but the way that he serves the patient and the improvement that the patient gets from his treatment. Of course, the first X-ray tells the story as to the extent of the injury, and when that fracture is put in place, he does as we all do. Then after that we want to know what is the result. We might be satisfied if the physical result, if the function of the arm is restored; we might be satisfied without examination, without an X-ray, but the X-ray would give the real true thing.

Q And X-rays taken four days after the accident would not be the kind that would be relied upon, would they? A Well, I would want to know what happens after the bones had been reset. If it is a simple fracture that one can feel with the fingers, without any trouble, it may not be necessary to take an X-ray, but the net result is what we want, to know what the picture is at the end of the proper time. If I can illustrate, if you will allow me to give, for instance, I saw a number of X-rays taken over a period of eight years, some each year which had been taken, and the last one was the final one that showed the complete result of that treatment. That is what we want, if we can, but where our patients are poor, we cannot always get it; in hospitals we always get it.

Q Assume that an accident happens on the second of August, 1926, what would you say as to whether an X-ray taken August 6, 1926, four days afterward, four days after the accident, is the proper basis for forming a conclusion as to the ultimate result? A If there is impairment of a limb for

after, we will say, two years afterward, and the function has not been restored, after injury, why, necessarily, under all conditions, you would want to know why; if you cannot get an explanation by manipulation, by an examination, we would seek our X-ray to show, to see just exactly what was the cause of it. Of course, it is up to the man, to the judgment of the attending surgeon; he is the man who has charge, and if he wants to follow out the case, up to the end of it, why, necessarily, I should say that he would take a picture. Sometimes we cannot always do that.

Q Well, from your examination would you say whether or not this lady has a tendency to exaggerate her injuries?

Mr. Dunn. Now, I object to that, if Your Honor please, being irrelevant and immaterial. I do not think the doctor is called as an expert on that subject.

The Court. I think that if he can answer, he may be permitted to.

A I should say, my own case, or whether it was my case or not, I do not see how I could feel well until the judgment was rendered, until the trial came off. They have to imagine something, not that this woman does—I do not mean that disparagingly in any way—but the natural tendency is always to maintain a condition of invalidism or impairment of some function, where there is a lawsuit pending over a long period.

The Court. He means unconsciously.

A (Continuing.) Unconsciously, you might say—

The Court. Psychologically?

A (Continuing)—or psychologically. It is a part of the make-up of the individual. I do not say

that they are faking that in any way, that way at all. This woman has been badly injured—no doubt about that—and is very hard to recover and get back; and suppose she did not get well the first year and the trial was on the second year, what could she show unconsciously? I am speaking of the average individual now; unconsciously they do do it.

Q Well, what is your experience, whether the termination of a trial terminates this psychological condition that you have told us sometimes exists?

Mr. Dunn. Now, I object to the question on the ground that it is irrelevant and immaterial, calls for an opinion, and it is in the nature of a hypothetical question, without being predicated upon fact.

The Court. I think it is objectionable, as long as counsel objects to it, and I think I should sustain it. I allowed the other because the doctor had examined this woman and he had formed certain conclusions as the result of his examination, as to whether there was any—

Mr. Chance. All right, I will withdraw it.

The Court. —exaggeration of her condition, but when you ask him this general question—

Mr. Chance. All right; I will withdraw that.

The Court. —which can have no bearing on this case, I think I should sustain the objection.

Q Well, having in mind your examination of her, and the conditions which you found, which you have described, as being of a psychological nature, what, in your opinion, will be the effect of the termination of the trial upon that condition?
A I think there is always a tendency toward improvement, especially functional troubles; if there

is real mechanical trouble or disease, there is very little benefit, no matter which way the trial goes, but the trial itself and the anticipation or the expectation of being paid for severe injury, all of these things take a large part in this question of immediate recovery. It would seem to me that after two years, say, two years, 1926, August 2nd—

Q August 2nd. A That this woman's condition is very slightly nervous now compared with after two years of treatment and care, and particularly throughout the convalescence, so that she will get better as time goes on.

Q Assume that this lady was able to use the hand of this arm, which is broken, to open the door of this court room back there, would your opinion as to her condition be affected—

Mr. Dunn. I object to the question, if Your Honor please—

Q (Continuing)—in the light of the statement that she made to you as to her condition?

Mr. Dunn. I object to the question, if Your Honor please, on the ground that it is an attempt to frame a hypothetical question, not based upon facts before us.

Mr. Chance. Of course, it is a little out of turn, but I am anticipating what the testimony will be.

The Court. That is the reason for it. If you can connect up that she did do that—

Mr. Chance. I have a witness that is going to swear to that.

The Court. All right, then, I will allow it, subject to being stricken out if that is not done.

A With the amount of function that she had in that forearm—the hand up to the elbow—I do not see any reason why she could not open the door.

Q What would you fix the percentage of loss of function that she has in the arm? A I would fix it quite large, as it is now, because she claims that the slightest movement gives her intense pain. I do not think I would move it very much, if that is a fact.

Q Well, if it were shown that she did move it in opening the door without any manifestation of pain, of course, your opinion would be changed? A I think she might do that.

Mr. Dunn. Oh, if Your Honor please, counsel knows better than that.

The Court. I will let the answer stand.

Q Did she make complaints of anything else besides her arm when she was telling you what was the matter with her? A Yes, her back, and her left side.

The Court. And her knee.

The Witness. And her knee.

Q Did you see any objective symptoms with respect to the back? A No.

Q You told us there were some objective symptoms with respect to the knee? A Yes.

Q Now, by objective symptoms, what do you mean? A Symptoms that you can see, hear or feel.

Q And subjective—what are subjective symptoms? A Those that the patient tells you.

Mr. Chance. I guess that is all.

Cross examination by Mr. Dunn.

Q Doctor, cannot see pain, can you? A No, you can feel it.

Q Persons suffering pain are the best judges whether or not they suffer pain, aren't they?

Mr. Chance. I object to that question. How can he tell what somebody else is the best judge of? Furthermore, it is not cross examination.

The Court. I think it is a question everybody on the jury can answer, however.

Mr. Chance. Well, that is a matter for the jury, not the subject of expert opinion. That is another objection to the question.

The Court. It is an answer that every person has to make for themselves, I suppose; perfectly true that what I know and nobody else knows, I alone can tell about.

Mr. Chance. Certainly.

The Court. And nobody can tell if I have pains except myself—

Mr. Chance. That is true.

The Court. —if there are no objective symptoms, and, therefore, the question answers itself.

The Witness. There are objective symptoms, Judge, even with the subjective symptoms.

The Court. Some, yes; you might describe those.

A With manifestation of pain there is acceleration of the pulse or attitude, and all of those things, which might be stimulated; but after observing them very closely one can tell whether one has a real pain or whether it is assumed. They are real symptoms that go hand-in-hand with subjective symptoms. I know if a man has got pains in the stomach. I can tell by his countenance that he has got pain in the stomach, and by his heart.

The Court. By his heart?

The Witness. Yes.

A (Continuing.) Because of its great shock to the heart in abdominal pain, it is bound to be manifested there, and he cannot control it.

The Court. Well, that would be an objective symptoms, that would not be subjective.

The Witness. No.

A (Continuing.) I say, they go hand-in-hand. There are some subjective symptoms that go hand-in-hand with the objective.

The Court. I suppose you could tell by the eye?

The Witness. To some extent.

A (Continuing.) There are many points of observation. The history of pain and the story of pain is a wonderful story.

Q Doctor, did you use the stethoscope in your examination yesterday? A I think I did.

Q Beg pardon? A I think I did; of the heart, I always do.

Q Doctor, you made the examination of Mrs. Peskowitz, at the request of whom? A Of Mr.—

Mr. Chance. Chance.

A (Continuing.) —Chance.

Q Chance? A Yes.

Q How long did it take? A About fifteen minutes, I should say, or thereabouts. I did not want to undress the woman thoroughly, as I might have done in my office. She complained of objective symptoms in various regions; we did not inspect them with the eye—just felt them with the hand.

Q When you made that examination yesterday, of course, you made it for the purpose of testifying in this case to-day, did you not? A Yes, sir.

Q You knew that you were going to be called upon to-day to testify? A I had hoped so, yes.

Q I have understood you to say—correct me if I am wrong—doctor, that an X-ray is the best means of determining the present condition of the arm? A Yes, I did say that.

Q Is that correct? A That is correct.

Q You did not make an X-ray examination, did you? A I could not. How could I?

Q I beg pardon. A I could not.

Q For what reason? A I do not think you would let me.

Q Did you make any such request? A No; there is no X-ray here.

Q Did your counsel make any such request for an X-ray examination, that you know of? A I had no right to make it. I might request counsel to see that it be done.

Q May I ask you, doctor, if you suggested directly or indirectly, at any time, that you wanted to take an X-ray of this woman's arm? A No, I did not. I heard that there were X-rays made; how late or how early, I did not know, and I expected to see them here on the stand.

Q Let me see, if I understand you correctly, doctor. You say that, in your opinion now, an X-ray of this arm would be the best criterion of this patient's condition; is that correct? A You understood me correctly.

Q Of course, you meant yesterday to ascertain the best possible conception of her condition? A I did, but I did not go into the question of the X-ray plate. I hoped that the plaintiff would supply me with all materials; they usually do.

Q Doctor, one knee was swollen, was it not? A Oh, yes, one knee had puffiness there, which is a real symptom of the patient's condition; there is a pathological feature which made it much larger than the other. I measured it relatively; it was

about an inch larger than the other knee.

Q You have described that as being one of the objective symptoms, you say? A One of the objectives.

Q Doctor, is it not a fact that sometimes nervousness is brought on by an accident? A Oh, yes, always, I think, unless it is very trivial or simple.

Q Doctor, where was the location of the injury to the arm? A The injury to the arm was described by, to me, as, I think it was the elbow, fracture of the lower part of the left humerus.

Q I beg pardon? A Fracture of the lower part of the humerus.

Q Well, ordinarily the humerus would not affect one's ability to turn a doorknob, would it? A No, I said the function to that—pronation function, flexion and extension, was all right, except it had to be done very carefully on account of pain.

Q What portion of the arm would you use in opening (operating) the handle of a door, turning the handle of a door? A Well, I can do it with just the hand.

Q Ordinarily, that is the lower extremity that we use for that? We do not use the humerus? A No, I mean we just—

Q We don't, as a rule, usually do it? A No, we just automatically do that.

Mr. Dunn. That is all.

Re-direct examination by Mr. Chance.

Q Was the failure for you to ask for an X-ray influenced in any way by the fact that the plaintiff's attorney told her not to say anything when she was being examined? A I know nothing of that.

Mr. Dunn. Now, if Your Honor please, I think that statement of Mr. Chance's needs to be challenged.

Mr. Chance. All right, that is what you told her, not to say anything, and I told her she would have to say something or the doctor would not know what to examine for. (After discussion.) That is all.

SIMON SHAPIRO, recalled.

Direct examination by Mr. Dunn.

Q Mr. Shapiro, where do you reside? A Brooklyn.

Q Married? A Yes, sir.

Q And are living with your wife in Brooklyn at the present time? A Yes, sir.

Q On August 2, 1926, were you riding in the city of Paterson? A Yes, sir.

Q Well, under what circumstances? A I was riding in a car with my family, coming to Passaic through Paterson.

Q By your family, whom do you mean? A My wife, my father-in-law, my mother-in-law, two sisters-in-law, and a brother-in-law.

Q Your father-in-law is Mr. Peskowitz? A Mr. Peskowitz, Mrs. Diana Peskowitz.

Q Now, where were you sitting in the car, Mr. Shapiro? A I was sitting to the left—or, rather, to the right of the driver.

Q In the front seat? A In the front seat.

Q Miss Bessie Peskowitz was the driver, was she not? A Yes.

Q Now, Mr. Shapiro, do you recall going along Vreeland avenue in the City of Paterson? A Yes, sir.

Q And an accident took place on that occasion, did it not? A Yes, sir.

Q Now, will you tell us, in your own way, what you saw, what transpired up to the time of the accident, on that occasion, from the time you struck Vreeland avenue? A We were nearing Seventeenth avenue, going towards Paterson—going towards Passaic, and the driver, Miss Bessie Peskowitz, sounded her horn and slowed down to cross Seventeenth avenue. We crossed Seventeenth avenue and after we crossd Seventeenth avenue, as far as I know, I saw a truck coming down in our direction, and the driver put his head out and looked to the rear of his car, going forward at the same time. The next thing I know is our car stopped short and then this truck hit the front left side and then swerved around so that to get out of our way and then the back of his truck, or rather, the side of his truck struck the left rear end of our car, sort of a corner; that is as much as I know of the accident.

Q That was the second impact, that is correct, Mr. Shapiro? A Just as the car—driver swerved around to his left again after striking our front struck the rear when we had passed the opposite corner of Seventeenth avenue.

Q It was the truck of Mr. Kramer, was it not? A Yes, it was a dash on the side.

Q At the time this truck struck your car, at the time of the first impact, was your car moving, or was it not? A It was stopped.

Q What happened to the Kramer truck after it struck your car? A The next I saw it, it was to the curb, very much ahead of our car.

Q What path did it take from the direction in which it had been coming until it stopped? What was the general path that it took? A Directly at us, although we had already crossed the corner.

Q Now, would you just come down from the stand for a moment? A (Witness at P-6.)

Mr. Dunn. I offer this map in evidence. Any objections, Mr. Chance?

Mr. Chance. No objection.

(Map marked Plaintiff's Ext. P-6.)

Mr. Dunn. For the benefit of the jury, this arrow indicates to the north of the map. This would be Paterson; this would be Passaic. This is East Thirty-fourth street, Vreeland avenue and Seventeenth avenue. This was Paterson; this way Passaic. (Explaining map.)

Q You were going from Paterson towards Passaic, were you not, Mr. Shapiro? You would be going in that direction, is that correct? A Yes.

Q And the other car going towards Paterson would be going in this direction? A On Vreeland avenue.

Q Now, would you take this pointer and explain to the jury the path of your car and the path of the Kramer truck at the time of the accident?

A Our car was coming along this way, sounding the horn and slowing up, and continuing up this way. When we were about here I saw this truck coming down about here. The driver put his head out, looked to the rear of him, and the next thing I knew, he was right on top of us, right here, and he turned around, continued going after he hit us, front, then he turned around, hit us back, and then he went toward here, somewheres around here (indicating).

Q Indicating about what? A About this second or third pole. That is just how his truck went up. We were right here and he turned around, faced this house over here.

Q When you say that you had crossed Seventeenth avenue, do you refer to the extended line of Seventeenth avenue? A I mean, this curb line.

Q Yes, sir. A I mean, this curb line; we had been on this side of the curb before being hit.

Q You may go back to the stand. A (Witness resumes stand.)

Q Did you see any other cars on the street than the truck of Mr. Kuiper and your car? A I believe there was a sort of a small sedan, I don't know whether it was a Chevrolet or Ford, in back of this truck, coming down the avenue.

Q Coming in the same direction as the truck? A Yes, right in back of the truck.

Q Right in back of the truck? A Yes, right in back of the truck.

Q How fast would you say the Kramer truck was going at the time of the accident? A Well, I should judge it was going quite fast, because the fellow couldn't stop in time to avoid hitting us.

Q Well, how fast? Are you able to tell us about how fast the truck was going, Mr. Shapiro? A Well, somewheres around twenty to twenty-two miles.

Q From the time you saw the truck coming toward your car, did the truck slow up any? A No. In fact, when this fellow started coming to us, he was not looking to us at all; he was looking back, and when he turned around he was right almost on top of us, and then he swerved to the left, making it swing away around, striking out front, and then he turned still further and then struck the rear of our car.

Q Were you injured in the accident? A Very minor. I had some lacerations on my right leg, but I had no doctors' bills; just first aid, that is all.

Q Just tell us what happened after the accident

with reference to the people in the car. A Well, practically the side of our car came off, or the door.

Q Side of your car? A Yes, and the driver fell out. I immediately got out on my side, and the first thing I did, I ran into the house facing our car and asked for a telephone and telephoned for an ambulance because—

Q Never mind the reason. The ambulance came? A An ambulance came.

Q After the ambulance came, what did you do, if anything? A I helped my wife from the back seat of the car, and I wanted to help my mother-in-law out, but she couldn't move, and I had an idea that she must have been very much hurt, and I told the physician—

Mr. Chance. I ask that his idea be stricken out.

The Court. Strike it out.

Q You cannot tell us what you told the physician. Probably your first experience on the stand, is it, Mr. Shapiro? A It is.

Q You cannot tell us what you told anybody. However, you assisted in getting them out of the machine, did you? A I did.

Q To get the others? Your mother-in-law is Mrs. —— Peskowitz, is it? A Diana Peskowitz.

Q They insisted on taking her from the machine, did they? A The doctor did.

Q Where did they place her? A In the ambulance, after the arm had been tied up.

Q Then what became of the other folks? A They all went to the hospital and received first aid treatment. I was not very seriously cut up, so I did not note them down.

Q Now, do you know the driver of the truck? A Do I know him?

Q Yes. A No.

Q Mr. Kuiper—Jacobus or Harry? A I do not know him personally.

Q Did you see him doing anything towards helping anybody to go to the hospital or being taken away? A No.

Mr. Chance. I object, immaterial.

Mr. Dunn. Withdraw it.

The Court. Withdrawn.

Q What did he do after the accident? A I saw him standing around, giving information. After he got off the truck, he came back and gave information to the police detective or sergeant.

Q What were your wife's injuries, if you know, Mr. Shapiro? A I know she had a cut—a cut on the left hand, because she complains to me that it might interfere with her playing. She is left-handed. Then she had several cuts, where I did not—I was so much upset I did not pay much attention to the injuries that she had, but I know the left hand was cut; I know that.

Q By whom was she treated? A Dr. Mendelsohn, charges $15.00, after receiving first aid in the dispensary of the hospital.

Q After that she returned with you to Brooklyn, did she not? A She returned to Brooklyn with me, and she received dressings in Brooklyn, without charge.

Q By the way, what occupation are you in? A I am auditor in the hospital.

Q She was treated in this hospital without charge? A She was treated in that hospital without charge.

Q Were you also treated there without charge? A I had first aid.

Q How long did those injuries that your wife received bother her? A Well, until the hand

healed up, I do not know; it was about a week or so, and the *scar* is still left, that is about all it was.

Q Did you testify as to the amount of Dr. Mendelsohn's bill, Mr. Shapiro? A Did I what?

Q Did you tell how much his—

Mr. Chance. He said, it was about fifteen dollars.

A I said, it was about fifteen dollars.

Mr. Dunn. That is all; take the witness.

Cross examination by Mr. Chance.

Q Now, where was it with respect to the northerly side of Seventeenth avenue that the car in which you were riding was when the horn was first sounded? A Before reaching the near curb of Seventeenth avenue.

Q Before reaching there, would you indicate how many feet back from the corner? A Well—slowly, I should say, about ten or fifteen feet.

Q About fifteen feet to the northerly of the—

A —near corner of Seventeenth avenue.

Q —curb line of Seventeenth avenue? (No answer.)

Q How long did your horn—how long did you continue to go with the horn sounding? A I don't remember whether it was one or two blasts.

Q Well, there were no blasts after you passed the Seventeenth avenue northerly curb line, were there? A There was no what?

Q No blasts of the horn. A No.

Q Where, with respect to the northerly curb line of Seventeenth avenue, was the automobile in which you were riding, when you first saw this truck of Kramer's coming? A We were passing the near corner. Well, I should judge, we were about at the rate of about twelve to fifteen miles an hour.

Mr. Chance. I ask that be stricken out, not responsive.

The Court. Strike it out.

Mr. Chance. Now, will you repeat the question?

Q (Repeated by stenographer.) Where, with respect to the northerly curb line of Seventeenth avenue, was the automobile in which you were riding when you first saw this truck of Kramer's coming? A About the corner, near corner.

Q Had the horn blown yet when you first saw Kramer's truck? A About the same time.

Q Well, then it was fifteen feet back, instead of at the corner, wasn't it? A Well, we were traveling—

Q Yes. Well, you said that you were fifteen feet back when you first heard the horn, didn't you? A Yes.

Q You said that that was about the same time that you first saw the truck? A Yes.

Q Now, then, where was the truck when you first saw it with respect to the southerly curb line of Seventeenth avenue? A I don't know the footage, but where that second tree is there, if you point to it.

Q Second tree on the westerly side of East 34th street? A No, where the truck was coming down.

Q Second tree? A Just the little—where the word "A" is on there; that is where I saw the driver stick his head out to the left and look to the rear and continue.

Q Now, when you saw the driver of this truck about as far northerly on Vreeland avenue as the "A" in Vreeland, what side of Vreeland avenue was he riding upon? A I think he was straddling the first car track.

Q By the first car track— A I mean the inside one.

Q (Indicating?) A Yes.

Q (Indicating.) A Yes.

Q In other words, his wheels were astride the westerly rail of the northbound car track? A Which is westerly, outside?

Q Here is the north; I think this is west, over here. A No, the easterly.

Q He was *trave*ling the easterly rail? A Yes.

Q At the same time that he was astride that easterly rail, at about "A," your car was—? A Across Seventeenth avenue.

Q Where were you, with respect to the car track? A We were on the street, not on the car track.

Q You were to your right of the car track, were you? A We were between the car tracks and the curb.

Q On the westerly side of the street, on your right hand side of the street, as you were going along? A Oh, yes, on the right hand side.

Q And about in line with this northerly curb of Seventeenth avenue, as extended; is that where you were when you first saw the truck? A (No audible response.)

Q Where were you when you stopped? A Where were we when we stopped?

Q Yes. A We had crossed Seventeenth avenue.

Q About how far across it had you gone? A Well—

Q Can you tell us approximately? A —a little more than a car's length.

Q Can you remember it by any trees that were around the neighborhood, or anything? any sign on the map like the—you indicated the "A," of our

car? A We were about where the "D" is, right after "D," I should say, of "Vreeland."

Q With the "—"; is that it? A Yes.

Q Suppose you come down here. A I couldn't mark the exact spot.

Q Certainly not, but as near as you can tell. A Yes.

Q This mark that you are making now is the mark where you were when you came to a stop? A Right around that spot.

Q That is the spot. Let us put your initial there, where you were, so that you can identify it later on. A (Witness indicates.)

Q Now, then, in other words, in the same time that this truck was traveling from the place abreast of "A" up to the place where the "S" is, your car traveled from the position where the curb line goes clear up to the "S," is that right? A (Indicating affirmatively.)

The Court. The answer is "Yes"; don't shake your head.

A Yes, sir.

Q Now, then, how was your speed as compared with the speed of the truck? A Much less.

Q Much less. I guess that is all.

Re-direct examination by Mr. Dunn.

Q Come down to the map, Mr. Shapiro. In answer to Mr. Chance's last question, in reference to the position of your car, when you saw the truck, where was your car? A (Indicating.)

Q Where did you say your car was when you first saw the truck? A Truck was coming down this way.

Q Yes, sir. A Right down this way.

Q Yes, sir. A We were over here.

Q Yes, sir. A Car was traveling down this way (indicating).

Q Yes, sir. A Went over here.

Q Just a minute. A Then we continued here.

Q When you were over here, indicating a point by the pole, where was the truck? At what point in the street? A Coming down this way, right about here.

Q Now, did you say to Mr. Chance that the truck went this distance while your car went that distance? A Not to my knowledge.

Q Did you mean to convey that impression? A No, sir.

Q When you were here, at this point, before you crossed Seventeenth avenue, where was the truck? A It was coming right down this way.

Q Where were you when you first observed the truck going to the left? A Just about crossing the crossing—I observed the truck going to the left?

Q When you first observed the truck going to the left, where was your car? A I was about this far when this fellow turned his head, put his head out of the cab.

Q Will you indicate those two points, where you were, where he was?

Mr. Chance. At what time?

Q (Continuing.) Where you were when you observed him start to turn to the left, where your car was. Just make that marking on the map. Mark S-1. A (Witness indicates as directed.)

Q Just indicate, if you will, where his car was when he started to turn to the left, at S-2. A (Witness indicates as directed.)

Mr. Dunn. By S-2. That is all.

The Court. Anything more, Mr. Chance?

Mr. Chance. Yes, sir; I want him to put some marks up here, too, while he is decorating it.

Re-cross examination by Mr. Chance.

Q Will you mark up here "S-3" at the place you said you were when you first saw the big truck, coming in the opposite direction? A "S-4"?

Q No, "S-3," unless we have got one "S-3." A (Witness indicates as directed.) S-3?

Q Yes. A I saw the big truck driving down Vreeland avenue.

Q Will you indicate the position alongside of the letter "A," as nearly as you can, where you referred to?

Mr. Dunn. Just a moment. I object to that question, unless that is the way he asked it before. That is what caused the confusion.

Mr. Chance. There is no confusion, except on your part.

Mr. Dunn. At what time and place do you mean, that he was at "A"?

Q The time you told us about.

Mr. Dunn. I object to that unless the time is fixed.

Mr. Chance. The same times he told us about.

The Court. Do you understand the question? Do you, Mr. Shapiro?

The Witness. I understand what I could answer, but I do not quite understand the question.

The Court. Reframe it, Mr. Chance.

Q Well, you said that Kramer's truck was at "A" at some stage of this performance that you have told us about on direct examination. A It was at "A."

Q You indicated on direct examination, however, at a place about where the "A" was in "Vreeland," didn't you? A That I saw the truck coming to that section?

Q Yes. A That is right.

Q All right; where were you when the truck was at "A"? A When the truck was at "A"?

Q When the truck was at "A," were you at "S-3"? A About there (indicating).

Q All right, mark "S-4" there. A All right. (Indicating as directed.)

Q Now, there is no confusion about it; you were at S-4 at about the time the truck was at "A"; is that right, as nearly as you can tell? A As nearly as I can tell.

Q All right, make "S-5" right there alongside of the "A," so that there won't any of us get confused again. A All right (indicating as directed).

Mr. Chance. All right, that is all.

The Court. We will take a recess until tomorrow morning.

(Evening Recess.)

April 11, 1928; 10:00 A. M.

STANLEY L. NEWKIRK, sworn.

Direct examination by Mr. Dunn.

Q Mr. Newkirk, where do you live? A 365 Twelfth avenue, Paterson.

Q What is your business? A Salesmanager, automobiles.

Q Do you know Mr. Peskowitz? A Very well.

Q Do you know what kind of a car he had in the year, 1926? A Chandler; I sold it to him.

Q When did you sell the car? A September, 1924; it was 1925 model.

Q Do you know the selling price of that car? A $2,250.00, just about.

Q Did you see the car? When did you see the car prior to August 2, 1926?

Mr. Dunn. I will withdraw that question.

Q Did you learn that Mr. Peskowitz had an accident with that automobile? A Yes, I found out; he told me that he had.

Q Now, when—if that accident occurred on August 2, 1926, how long prior to that time had you seen the car? A Probably three weeks.

Q What was its condition when you did see it? A Very good.

Q What would you say was the value of the car when you saw it last before August 2, 1926? A About $1,250.00.

Q Did you see it after the accident? A Yes, sir.

Q What was its condition when you saw it on August 2, 1926, or after that time? A It was a wreck.

Q How long after August 2, 1926, did you see it? A That is a pretty hard question to answer. I can't give you that date definitely.

Q About how long a time? A I should imagine it was a week.

Q Do you recall where it was when you saw it? A Down at Passaic, in a garage; I can't tell you the name of the garage.

Q What was its value when you saw it at that time? A $50.00 to $100.00; it was a wreck, practically of no value.

Mr. Dunn. Take the witness.

Cross examination by Mr. Chance.

Q How many accidents had that car been in, to your knowledge, between the time that you sold it and the date of this accident?

Mr. Dunn. I object to that.

The Court. I will allow it, because he said it was in good condition before the accident.

Mr. Dunn. Your Honor, allow me an exception.

The Court. You may have it.

Q How many accidents had that car been in between the time you sold it to him and the day of August 2, or thereabouts, 1926? A None, to my knowledge.

Q Well, what do you mean by "none to your knowledge"? You mean you do not know of any other accident, or you know it had not been? A I do not know of any other accident.

Q Just what is your actual work at the place where you are employed, with respect to the repairing of automobiles? Anything? A I do no repairing; I appraise cars, used cars, as a trade-in against a new car. I am the salesmanager.

Q Well, you did not make any appraisal of this car before the accident, did you, that we are talking about in this suit? A I made an appraisal on the car, as a trade-in value, on a new car, before this.

Q What was the date that you made that? A That, I cannot tell you, off-hand.

Q That doesn't mean to get down to the exact date, but approximately, as nearly as you can. A I believe Mr. Peskowitz has something in writing from me to that effect. I believe there is a letter on file that we should allow him $1,250.00 on his car.

Mr. Chance. Got the letter?

Mr. Werksman. Yes, I have that letter.

A (Continuing.) I may be wrong, but I believe that is so, to my memory.

Q Well, when you made this appraisal, what inspection did you make of the car? A The car had just been in our garage for a thorough going-over, to see that it was OK; we knew it was OK.

Q Yes? A In fact, Mr. Peskowitz always brought his car to us for little things that might happen to the automobile or that might be wrong with it.

Q Well, do you know whether, in August, 1925, this car was in your garage? A August, 1925? Well, that, I cannot give you the dates; I cannot answer to that; I would have to look that up.

Q Let's see; what is the name of your company? A Chandler Motor Sales Company.

Q Where is that located? A 25 *Lake* street, the garage is.

Q 25 *Lake* street? A Yes, sir.

Q Paterson? A Yes, sir.

Q Well, who is the man there who has charge of the repairs that could tell us what repairs had been made to this car between the time you sold it and the time of the appraisal that you have made? A Those records would be in the office of the Center Sales Company and the repair work that had been done on the car.

Q Who would have custody of this? A Well, the office is the custodian; Charles A. Sigel is the president of the company, he could tell; *Charles* Hamilton is the service manager, you could get it through Mr. Hamilton, to save Mr. Sigel's worrying about it.

Mr. Chance. I think that is all.

Mr. Dunn. Did you call on us to produce the letter?

Mr. Chance. Oh, no; I am not particular about the letter.

Mr. Dunn. That is all.

JOHN JAMES RILEY, sworn.

Direct examination by Mr. Dunn.

Q Mr. Riley, where do you live? A At 542 East 33rd street.

Q Paterson? A Paterson, New Jersey.

Q Married? A Yes, sir.

Q Have you a family? A Yes, sir.

Q Do you live at that address with your family? A At that address with my family.

Q What business are you in? A I am in grading, sodding and gardening.

Q How long have you been engaged in that line of work? A Why, I have been in that line of work for the last fourteen years.

Q How long have you lived in the City of Paterson? A Why, I guess around thirty-one or thirty-two years.

Q Mr. Riley, where were you on the morning of August 2, 1926, about 11:30 o'clock to 12:00 o'clock? A On East 34th street.

Q What were you doing up in that section? A Why, I was just going after my men, to bring them to lunch.

Q You were on 34th street, I think you said? A Yes, sir.

Q From what street had you come, before you got on 34th street? Where had you entered 34th street? A At 18th avenue.

The Court. You were driving a car, were you?

The Witness. I was driving my own truck.

Q What kind of a car is that, Mr. Riley? A That was an Overland truck.

Q Where were you driving at? A On East 34th street.

Q On 34th street, and in which direction were you going, Mr. Riley? A I was going north.

Q That would be towards Paterson as distinguished from Passaic? A Yes, sir.

The Court. Towards Vreeland avenue?

Q Towards the intersection of Vreeland avenue? A Towards the intersection of Vreeland avenue.

Q Now, at that time did you observe any cars while you were riding along 34th street on Vreeland avenue? A Yes, sir.

Q What cars did you first observe on Vreeland avenue? A Kramer's truck.

Q In which direction was Kramer's truck going? A He was going north, same as I was going.

Q Where was his truck when you first saw it? A He was on Vreeland avenue, right alongside of me; I was on 34th street, riding this way, and he was on Vreeland avenue, riding that way.

Q What part of 34th street were you on when you first saw his truck, near what street? A When I first saw him?

Q Yes. A There is a little garage right there on the point, and as I looked through (toward) the garage I seen him coming up Vreeland avenue.

Q Whereabouts on Vreeland avenue was the Kramer truck when you saw it? A Why, he was coming along on the right hand side, right hand car track, just from the east side of Vreeland avenue.

Q Now, did you see an accident occur there on that morning? A Yes, sir.

Q Did you later learn whose car—what cars were in the accident? A I did.

Q What was the name of the owner of the other car?

Mr. Chance. Name of that owner; I object to that.

Mr. Dunn. Just a moment.

Mr. Chance. I object to the question, because there is no proper foundation for it. It assumes that this man knows who the owner was.

The Court. From hearsay?

Mr. Chance. Yes.

Mr. Dunn. Withdraw it.

Q Did you later learn who owned the other car? A Why I learned their names, but I cannot pronounce it.

Q In which direction was the other car going before the accident? A Why, the other car was going south on Vreeland avenue.

Q Now, will you just tell us, Mr. Riley, in your own way, what you saw of that accident? A Why, what I saw of the accident, truck was coming along Vreeland avenue, as I said, coming up on his right hand side. Just as the sedan was coming the other direction, going towards Passaic, on Vreeland avenue, the driver of the truck cut right across that little "V". I was just this side of—I couldn't say it was Seventeenth avenue, it was more of the corner on 34th street and Vreeland avenue. Then what I saw of it, he cut right across there, his front wheel hitting the sedan just as the sedan had stopped.

Q What part of the sedan did the front wheel hit? A It hit right under the front door, right just about over the front fender, I should say.

Q Which side of the sedan? A I believe it was the left hand side.

Q Left hand side of the sedan? A Yes, sir.

Q Which wheel of the truck hit that left hand side of the sedan? A The right front wheel.

Q Just what happened after that? A Then he knocked the truck—or the sedan—he hit it—and he knocked it down facing west; that is west, this way, from Vreeland avenue, sedan stood facing west; as he broke loose from the right front wheel, he swung down 34th street, and the rear of his truck side-swiped and smashed the door off of the sedan. With that, the young lady that was driving the car fell out on the road, and I run over to pick up the lady and help them out of the car.

Q How far from the sedan did the truck stop after the accident? A Why. in the neighborhood of fifty feet, I guess, up on 34th street.

Q Now, after the accident, what did you do? A I helped to get the ladies out that was hurt in the car.

Q What else took place while you were there? A Well, the—I don't know—the driver—the gentleman that was in the car and the driver was arguing, but I didn't hear what they was saying; they was standing over there at the corner, but I was busy with the young ladies there, and, really, the older lady was the one that I was trying to get out, because she was pinned in the car.

The Court. Where did you stop your car?

The Witness. Right on 34th street.

The Court. Beyond the little point?

The Witness. Yes, beyond the little point; yes, sir.

The Court. Not up to Seventeenth avenue?

The Witness. Not up to Seventeenth avenue; no, sir.

The Court. On the right?

The Witness. On the right hand side.

Q Now, did the Kramer truck at any time enter Seventeenth avenue? A No, sir.

Q How fast were these cars going before the accident? A Well, I couldn't tell you just how fast; I could make what I estimate.

Q What is your opinion about the speed of the truck and the sedan before the accident? A I should judge about twenty miles an hour the truck was going, and the sedan had just about stopped.

Q Now, did you see another car on Vreeland avenue besides these two just before the accident? A Yes, sir; some Chevrolet car from out of town, and he was the man that helped with the ladies.

Q Where was this Chevrolet car with reference to either of the cars? A He was following the truck.

Q Now, did you see the driver of the Kramer truck do anything before the accident? A I did.

Q What was he doing? A I seen him look out to see if everything was clear in back of him.

Q How long did he look in that manner that you have indicated? A Well, as far as I really thought that he was—that he had his head out until he hit.

Q I beg pardon? A I really thought he had his head out until he hit that there sedan.

Q Did his truck stop or slow up from the time you saw it until he hit the sedan? A That I couldn't say. I couldn't be positive of that, whether he slowed up, or not.

Q Did you observe the condition of the people in the car, Mr. Riley? A Of the ladies?

Q Condition of the people—yes? A Yes, I did.

Q What was their condition? A Why, there was some of them had their legs cut, some of them

had their hands cut; one lady was injured, she couldn't walk at all.

Q Which was that lady? A That was the older lady.

Q Do you see her in the court room? A I do.

Q Which is she? A That is, the middle lady, next to the man with the glasses.

Q Indicating the second seat? A That is right, one in between the two men.

Mr. Dunn. Stand up.

Q Is this the lady? A That is the lady.

Mr. Dunn. Indicating Mrs. Peskowitz.

Q What was her condition? A Why, there was—she couldn't move her arms, and she was hollering about her leg, her leg being hurt, that is all she hollered, holding her leg, just hollered about her arm and leg, that is all I could say.

Q She was taken where? A She was taken to the hospital.

Q In an ambulance? A In an ambulance.

Q Now, Mr. Riley, did you know any of these people before the accident? A No, sir; I did not.

Q You do not even, do you, know the name? I have pronounced it two or three times. Can you pronounce it yet? A I cannot pronounce it.

Q You never knew any of them before the accci-dent, did you? A I have never seen them until the date of the accident until Monday right here in this place.

Q Do you know how they got your name as a witness? A Positively, I do not; they asked me for it, and I wouldn't give it to them.

Q Your truck is, you said, an Overland truck? A Overland panel truck.

Q With your name appearing on the side of the truck? A Yes, sir; it does.

Q Have you any interest in this case, Mr. Riley? A None whatsoever.

Q Do you know Mr. Kramer, Mr. Lawrence Kramer? A Well, I know of him, that is all I know; he asked me for my name too.

Mr. Dunn. Mr. Kramer, stand up please.

Q Do you know that gentleman now? A Yes, sir.

Q Did you see him at the time of the accident? A Yes, sir.

Q You have not been subpoenaed by him or anybody on his behalf? A He done the same as the other people; he asked me for my name, and I told him he could not have it.

Q I say; you have not been subpoenaed by him? A No, sir; I have not.

Mr. Dunn. That is all.

Cross examination by Mr. Chance.

Q The accident was all over before you saw him, wasn't it? A Saw who?

Q The accident was all over before you saw Mr. Kramer? A There was nobody at the accident but me and the other fellow.

Mr. Dunn. Just one omitted question.

Mr. Chance. All right.

Mr. Dunn. Do you know the name of the man that was in the Chevrolet sedan?

The Witness. No, I do not.

Q How far apart were these two cars when you first saw both of them? A How far apart?

Q When you first saw both of them? A Yes, which two cars are you speaking about, do you mean?

Q Mr. Kramer's truck was coming somewheres along Vreeland avenue, and the other car was coming somewheres southerly on the same street. Now,

haven't you told us that you saw Mr. Kramer's truck first of these two cars? A Yes, sir; I sure did.

Q Later the other car came in the range of your vision also? A Yes, sir.

Q Now, how far apart was the Kramer truck and the Peskowitz sedan at the time both of them had entered your range of vision? A Why, I guess, I saw Mr. Kramer's truck seventy-five feet before—he had traveled seventy-five feet before I seen the other man's car.

Q Yes, but you still haven't gotten the question, Mr. Riley. What I want to know is when you saw the other car, that is, when you had seen both of them, how far apart were these two cars? A What do you mean? When I seen both of them at the same time?

Q Yes. Here is Kramer's car, going along Vreeland avenue somewhere, Peskowitz' car coming down here. Now, how far was it between the truck, wherever it was down here, and the sedan, wherever it was up on the northerly, to the north? A Why, when I seen the two cars that is, together, as you are speaking about—

Q Yes? A I was just past the garage on that corner.

Q Which corner is that here? A Right in there, yes, sir; well, it is back further.

Q Back further, on the easterly side of 34th street, you had passed the garage? A Yes, sir.

Q You did not pass there? A No, sir.

Q How far had you gone up there towards that?
A I was back of where that "E" is, there about.

Q About where the line goes across there at the far side of the map, where there is a figure "60"?
A That is where I stopped.

Q You stopped there, and you saw Kramer's truck out on Vreeland avenue, didn't you? A Yes, sir.

Q Later you saw Peskowitz' car somewhere on Vreeland avenue, didn't you? A Just as quick as I could look, I seen—I don't know who was the name, the other fellow's car.

Q Yes, call it the sedan. A Sedan. I seen the other people's sedan just crossing Seventeenth avenue and stopped when he shoots across.

Q Now, what I want you to tell me when you saw that sedan and also saw the truck—A Yes, sir.

Q —how far apart was the sedan and the truck? A Why, about the width of Vreeland avenue.

Q About the width of Vreeland avenue? A Not quite from the first car track into Vreeland avenue.

Q Now, where do you mean? What first car track? Suppose you come down here, maybe you can help me better on the map. A Yes, sir. (At p-6.) When I saw Mr. Kramer's truck and the other car, the other car had come down—

Q Where is that car?

Mr. Dunn. Wait, let him finish his answer. What were you going to say about the map? He wants to see which way the map is. Just let him answer, if you don't mind. Mr. Riley, what were you going to say before you were interrupted, about the map?

The Court. What difference does it make what he was going to say?

Mr. Dunn. I think I understood him to say —I do not want—

Mr. Chance. He says he did not understand the map.

The Court. I understand, that is what he meant.

The Witness. No, I don't want to be calling north south.

The Court. Look at the map.

The Witness. That is what I wanted to do.

Q All right. A (Witness examines map).

The Court. Do you understand the map?

The Witness. Yes, sir.

A When I first saw the truck?

Q Where was the truck when you first saw it? A Right here, right on these car tracks.

Q Just suppose you point the pointer here at the place where the truck was when you first saw it? A Right about here.

Q Now, then, will you put "R" there at the place where the Kramer truck was when you first saw it? A (Witness indicates as directed).

Q Now, then, where was the sedan when you first saw that? A Sedan was about in here.

Q Put a little "1" up alongside of the "R", so that we can distinguish it from the other? A (Witness indicates as directed).

Q Where was the place of the accident, as nearly as you can recall, where the two cars actually came together? A About here.

Mr. Dunn. Make that "R 2".

Q Make that "R 2"? A R 2 (indicating).

Q This map is to a scale of an inch equals ten feet; do you understand that? A An inch equals ten feet. Well, I can read, but—

Q How many feet would you say it was between the place where you first saw the sedan and the place where the accident happened, where the two cars actually came together? A How many feet?

Q Yes, how many feet between the time when you first saw the sedan and the time when the two

came together? A How many feet between the two cars? You mean, the truck and the sedan?

Q No, how far did the sedan go from the time you first saw it to the time of the accident? A About ten feet.

Q About ten feet? A Yes, sir.

Q How far do you recall the truck went between the time you first saw that and the accident? A Why, I should judge that went about thirty-five to forty feet.

Q About thirty-five or forty. Well, if I call your attention to the distance which you have indicated on here between the place where you first saw the truck and the place where you say the accident happened— A Yes—

Q —that is how many inches, would you say that is? A How many inches?

Q Yes. A I figure that is about eleven inches.

Q About eleven inches, so that, in other words, that equals on the scale, 110 feet? A Yes. Well, I don't know anything about the scale; I am only just telling you as near as I can to it.

Q Well, at any rate, the distance to the southerly—from the place where you indicate the accident as happening, that is "R 2"— A Yes.

Q —to the place where the truck was when you first saw it, should be about thirty feet, regardless of what the mark shows on the map, as nearly as you can recall? A It should be about thirty feet, yes.

Q Yes. A Thirty-five or forty feet.

Q Well, forty feet. In other words, you think the truck went forty feet between the time you first saw it and the time it got up to where the accident happened? A When it got to where the accident happened.

Q Just where was it that you were? A I was just right here.

Q Right here. Put an "R 3" at the place where you were when you made your observation. A (Witness indicates as directed).

Q Were you at a complete stop when you first saw the truck? A When I first saw the truck? No, sir; I was not.

Q Well, now, when you were at "R 3," what was happening? Was that when the two cars were actually coming together? A What was happening?

Q Yes? A I was just going along, I was slowing down then because I seen Kramer's truck cut across here, and I slowed down myself.

Q Yes? A And I seen that he was going right for this car, and I jambed on my brakes and stopped here.

Q How far did you travel between the time you first saw the Kramer car and the time that you have got to this place, "R 3"? A How far did I travel?

Q Yes? A I traveled from East 33rd street down Eighteenth avenue, to East 34th.

Q Now, were there any other automobiles to the west of you on East 34th street, between Seventeenth avenue and you? A The only automobile I seen on East 34th street, that I have noticed, was Kramer's truck.

Q Was there any obstruction of any kind before the happening of this accident anywheres to the north of the place that you have indicated as "R 1"?

Mr. Chance. I will withdraw that.

Q Was there any automobile or obstruction of any kind which would have interfered with the

sedan going into Seventeenth street had the driver undertaken to do so? A There was no automobile there at all.

Q No automobile; no obstruction of any kind? A Not that I seen; no, sir.

Q Was there any obstruction of any kind anywheres in 34th street which would have interfered with this sedan turning into 34th street, other than your car? A My own car was about the only one I saw, yes.

Q Were there any other automobiles coming westerly on Seventeenth avenue at this time? A That, I could not say.

Q You did not see any anyhow? A No, I did not see any others.

Q Well, how far to the north of Seventeenth avenue did you observe just before the happening of this accident? A How far?

Q Yes. A Well, I don't think I seen very far; only thing I looked at, someone blew their horn, and I just happened to look out, and I seen the sedan.

Q Do you know who blew the horn? A No, I don't.

Q Now, excepting for your own car and the sedan, there was no obstruction of any kind in the portion of this map which is indicated as East 34th street, or the portion that is indicated as Seventeenth avenue, so far as you observed? A I did not see any; no, sir.

Q Now, you come back on the stand? A (Witness resumes stand).

Q Did you observe how the people were situated in the sedan, how many people on the front seat, for instance? A Why, I think there was two, but I am not sure.

Q Not sure whether there was two or more? A I do know that there was one young lady and the (a) man that was on the front seat.

Q You are sure that there was at least two? A Yes.

Q Do you know how many people were in the car altogether? A I think it was around six.

Q Six people in the sedan? A I think so; yes, sir.

Q Did you see any boxes or trunks, anything of that kind in the sedan? A I seen one suit case.

Q Where was that in the sedan? A Where was that?

Q Yes. A That was setting in the back, between the seats.

Mr. Chance. I guess that is all.

The Court. This was about noon hour, was it, did you say?

The Witness. I should judge, about twenty minutes of twelve.

Redirect examination by Mr. Dunn.

Q Mr. Riley, I think you said in answer to Mr. Chance's question that you heard a horn blow, and you looked up and saw the sedan. Is that what you said? A Yes, sir.

Q From what car did you hear the horn blown? A Well, I am not sure which one; I think it was the sedan.

Mr. Chance. I—

A (Continuing). I am not sure.

Mr. Dunn. That is all.

Mr. Chance. I guess that is all.

ABRAHAM KOVEN, M.D., sworn.

Direct examination by Mr. Dunn.

Q Doctor, you are a licensed physician, licensed to practice in the State of New Jersey, are you not? A Yes, sir.

Q How long have you been a doctor? A Eight years.

Q Connected with any institutions, doctor? A Yes.

Q What institution? A Passaic General Hospital, Passaic.

Q How long have you been—Passaic? A Yes.

Q How long have you been so connected? A Past five years.

Q Were you connected with any other institutions, doctor? A Yes, the Beth Israel Hospital of Passaic.

Q How long have you been connected with that institution? A One year.

Q Doctor, did you have occasion to treat any of the plaintiffs in this case? A Yes, sir.

Q Which of the plaintiffs did you have occasion to treat? A Mr. Reuben Peskowitz, Miss Bessie Peskowitz, and Mrs. Peskowitz.

Q When did you treat them? A From the early part of August, 1926, until the latter part of September, 1927.

The Court. Three of them, you said?

The Witness. Yes, sir.

The Court. Now, the three you treated were Mr. and Mrs. Peskowitz and Bessie?

The Witness. Yes, sir.

The Court. You did not treat Jennie Shapiro?

The Witness. No, sir.

The Court. Nor Dorothy?

The Witness. No, sir.

The Court. All right

Q When did you first treat Mr. Reuben Peskowitz? A On August 2nd, I believe, 1926.

Q How many times did you treat him and for what, doctor? A Why, I treated him for laceration of the right hand, lacerations at the base of the little finger, that required two sutures, laceration on the middle finger, another laceration of the left hand at the base of the little finger and also bruises and contusions of the right side of the body, the back, thigh, and the knee.

Q How many times did you have occasion to treat him? A I treated him from August 2nd to September 13th.

Q What was your bill for treating him, doctor? A $84.00.

Q Do you think that charge is a reasonable one for the services rendered to Mr. Reuben Peskowitz? A Yes, sir.

Q Now, did you treat Bessie Peskowitz? A I did.

Q When did you first treat her? A I treated her from August 2nd to August 17th.

Q What did you treat her for, doctor? A I treated her for laceration of the left calf and bruises and contusions of the left ankle.

Q What was your bill for treating her? A $48.00.

Q Is that a reasonable charge for the services rendered? A Yes, sir.

Q Both of those people had received first aid prior to your treatment, had they not, doctor? A No, I did not give them any of the first aid.

Q I say, that both of those people had received first aid prior to your treatment, had they not? A Prior? Yes, sir.

Q Now, when did you start to treat Mrs. Diana Peskowitz? That is, the wife of Reuben Pesko-

witz? A About the end of November.

Q About what was her condition when you first saw her? A Highly nervous condition; she was very irritable, very sensitive; she had sudden outbursts of weeping that were uncontrollable; pains, especially pains where the truma took place, that is, the left arm, left elbow, left knee; she also complained of pain over the entire body, headaches, very irritable, rapid heart, nervous heart.

Q When she came to you in November, the arm had already been set, had it not? A Yes.

Q How long did you treat her, doctor? What did you do for her? A I treated her for eleven months, from November to August—September.

Q Have you seen her recently, doctor? A Why, she still comes once in a while to my office for the nervous condition.

Q What is her condition to-day, doctor? A Very highly nervous, very irritable, very sensitive, sudden outbursts of weeping, that cannot be controlled, complains of pain.

Q Where does she complain of pain, doctor? What region? A She still complains of pain where the injuries took place, the arm, that is, the left arm, left knee, left side of the chest, where I believe she had a fractured rib.

Q Yes? A And also pains over the entire body, severe headaches.

Q What was your bill for treating her, doctor? A $176.00.

Q You are still treating her occasionally, are you not? A Occasionally, yes.

Q Has this bill been paid, doctor? A Why, yes, all of the bills have been paid.

Q Are you able to tell us, doctor, about her relative condition to-day, to any percentage of disability? A Why, no, nothing definite about that.

Q Reuben Peskowitz, the husband, and Bessie have recovered from their injuries, have they not? A Yes, they recovered from their injuries completely.

Mr. Dunn. That is all. Take the witness.
Mr. Chance. That is all.

MISS BESSIE PESKOWITZ, sworn.

Direct examination by Mr. Dunn.

Q This is your first experience in court, is it not? A Yes, sir.

Q You are the daughter of Reuben Peskowitz? A Yes, sir.

Q You reside at Passaic, with your family, do you not? A I do.

Q Miss Peskowitz, you were driving a Chandler sedan on the morning of August 2, 1926, weren't you? A Yes, sir.

Q You had been up to Parkesville, New York; is that correct? A Yes, sir.

Q And were returning to the home in Passaic, when an accident occurred? A Yes, sir.

Q That accident occurred in the vicinity of Seventeenth avenue, Vreeland avenue and 34th street in Paterson, didn't it? A It did.

Q You were proceeding in a generally southerly direction along Vreeland avenue, in Paterson, weren't you? A Yes, sir.

Q Now, Miss Peskowitz, will you just tell us, in your own way, what you know about the accident? A We were riding along Vreeland avenue, and as I come to the intersection of Vreeland avenue and Seventeenth avenue, I noticed a truck coming to the opposite direction, and I also noticed that there was a Chevrolet car in the back of the truck. As I come to the intersection of Seven-

teenth avenue, I blew my horn and slowed the car down. When I passed Seventeenth avenue I noticed the driver of the truck put his head out to the side, looking backwards, and without any warning and still looking back, he turned his car suddenly toward me. When I saw that I immediately put my brakes on, started and stopped the car. He struck the left front of my car with such force that it just turned my car facing Seventeenth avenue, and then he made another turn to the left, striking the back of my car, and continued on its way to 34th street.

Q Now—

The Court. What did you say you did just before the collision?

The Witness. I brought my car to a stop.

The Court. Were you to a dead stop?

The Witness. Yes—before we come to a dead stop my car went about ten feet.

The Court. At the time of the collision, were you slowing or just coming to a stop?

The Witness. No, I stopped.

The Court. All right

Q About what space, Miss Peskowitz, did you stop your car from the time you put on your brakes?

A About ten feet.

Q What brakes did you put on? A I put my foot brake and then my emergency brake on.

Q Now, just, when you put on your foot brake and your emergency brake, about how fast were you going? Just tell us roughly, if you do not know exactly? A Why, about fifteen miles an hour.

The Court. You had been going faster than that?

The Witness. Before I came to the intersection.

The Court. How fast had you been going then?

The Witness. I should say about twenty.

Q Did you observe how fast this truck was going, Miss Peskowitz, the Kramer truck? A Why, I should judge, about twenty-two to twenty-five miles an hour.

Q Did the Kramer truck, in your opinion, slow up, or attempt to slow up, before it struck your car?

Mr. Chance. I—

A Yes, sir.

Mr. Chance. (Continuing)—object to that question, in her opinion.

Mr. Dunn. I will withdraw the question.

The Court. Question withdrawn; answer stricken out.

Q Did the Kramer truck stop or slow up before it struck your car? A No, sir; I do not believe he saw my car, because—

Mr. Chance. I ask that be stricken out.

The Court. Strike it out. He did not slow up, is that it, Miss Peskowitz?

The Witness. No, sir.

The Court. All right.

Q He did not slow up? A No, sir.

The Court. What else did you do, Miss Peskowitz, when you put on your brake?

The Witness. I come to a stop.

The Court. What else did you do with respect to the operation of the car, except to put on both brakes?

The Witness. I cannot do anything.

The Court. Except to blow the horn.

The Witness. I blew the horn as I come to the intersection of Seventeenth—

The Court. But not when you were stopping, when he was right on you?

The Witness. No.

The Court. All right.

Q From the time he started to come towards your car, how far was his car away from your car, from the side of your car? Do you understand the question? A I think I do—I cannot—

Q I will reframe it. He had been going in a northerly direction? A Yes.

Q You were going in a— A Southerly.

Q —southerly direction? A Yes, sir.

Q Now, if you both had continued to maintain those directions, how far would your cars have been apart when you passed each other? A Why, I do not believe it would be very far, because he was on the tracks.

Q Yes, and how far were you from the track, coming where you were? A I was between the track and the curb.

Q You were between the track and the curb? A Yes, sir.

Q About how far was your car from the track, from the track nearest you? A About three feet; about three feet.

Q Just give us your best idea, about how far you were. A About three feet.

Q I think you said that he was in the track, going in a northerly direction? A Yes, sir.

Q And which track was he in? A He was the first track.

The Court. To his right, you mean?

The Witness. First track to his left.

The Court. That would be the track on your side?

The Witness. No, I mean the track on his side.

The Court. That would be on his right.

Mr. Dunn. He was going in a northerly direction, and he would be on the first track to his right.

The Court. To his right, her left.

Q Well, which track was he in? A Why, the near wheels—his left wheels was on the first track.

The Court. First track on his right?

The Witness. On his right, yes.

The Court. Exactly. You said on the left, you mean on your left?

The Witness. Yes.

The Court. On his right. That straightens it out.

Q Well, can you tell us, Miss Peskowitz, about —now, about how far his car went from the time he started to turn until he struck your car, about what distance? A I just don't understand that.

The Court. Well, he was over on his right?

The Witness. Yes.

The Court. Traveling the first rail?

The Witness. Yes.

The Court. And the accident occurred over on your right, so he crossed all three rails?

The Witness. Yes, he did.

The Court. And you were three feet from the rail on your side, were you?

The Witness. Yes, I was.

The Court. You did not change your course?

The Witness. No, I did not.

The Court. So the distance that he traveled when he made the turn was from where he was traveling the first rail, beyond the other

rails three feet, beyond that from where you were; is that it?

The Witness. Yes.

The Court. You do not know how far that is in feet?

The Witness. No, I do not.

The Court. Was it a sharp turn or a gradual turn that he made?

The Witness. No.

The Court. Did he come to the Seventeenth avenue intersection, or not?

The Witness. No, sir; he did not.

Q At no time did his car enter what would be the continuation of Seventeenth avenue? A No, sir.

Q When his car, the Kramer truck. came towards your car—withdraw that. What part of the Kramer truck came in contact with your car? A Front left—his front right.

Q His front right? A Yes, sir.

Q What part of your car did you say that came in contact with? A With the front left of my car.

Q What part of the front left of your car? About where did his car strike your car? A Why, between the fender and the door.

Q I beg pardon? A Between the fender and the door.

Q Which fender, to what side? A Front left fender.

Q Which door? A Left side door.

Q Front or rear door? A Front.

Q Between the left front fender and the front door about, is where his car struck your car the first time; is that correct? A Yes, sir.

Q Where did the second blow strike your car? A It struck the left rear of our car.

Q What portion of his car, or truck, did that? A Why, the back of his truck went right back.

Q As the result of this accident, were you injured? A Yes, sir.

Q Where were you injured, Miss Peskowitz? A My left leg, arm; I had bruises around on the body.

Q Did you have any pain as the result of those injuries? A Yes, sir; I did.

Q And you were treated by what doctor? A First, Dr. Mendelsohn, and then Dr. Kovèn.

Q How do you feel now? A Very good.

Q You are not complaining of any permanent injuries, are you? A No, sir.

Q Now, whom else was injured in the car, Miss Peskowitz, in your car? A My mother was injured very badly, and Mr. Shapiro and Mrs. Shapiro, and our father.

The Court. Dorothy?

The Witness. Dorothy? She was just bruised up.

The Court. Is Dorothy in court this morning?

The Witness. No, sir.

Q How old is Dorothy now? A She is six now.

Q What were Dorothy's injuries? A She was black and blue, her leg and arm.

Q She was how old? A She was four and a half then.

Q She was in your mother's lap, was she? A Yes.

By the Court.

Q Where did the truck go after the collision, Miss? A He drove on to 34th street, kept on right 34th street.

Q When the collision occurred, the rear end of his car hit the rear end of your car, he was then headed up Vreeland avenue, in a northerly direction. Is that right? A No, I think he was headed into Seventeenth avenue.

Q Well, how could the rear end of his car strike you, if he was not headed in a northerly direction up Vreeland avenue? A Well, after he—

Q For instance, his car hit you this way? A Yes, sir.

Q And then went around this way, and the back of his car hit you there? A He hit my back, but then he was turning into 34th street.

Q Is that right? How could he turn into 34th street? Have I got it wrong?

Mr. Dunn. I think so.

Q All right. A He was coming down this way; I was going this way; he turned in and hit my car this way, hit my car in the front here (illustrating).

Q Wait a minute; where did he hit your car? A Right here.

By Mr. Dunn.

Q Which is the front? A This is the front of my car.

Q This is the front of your car? A Yes.

Q This is— A Back.

Q Or the rear. This is the right side—your left side, excuse me. A Left side.

Mr. Dunn. If you have no objection, we will show it to the jury when we get through here.

Mr. Chance. The jury cannot see how you are making, how the papers come together up there.

Mr. Dunn. The court can.

The Court. I do not have to.

Mr. Chance. The jury has got to pass on the facts. Why not indicate down here on the map.

The Court. Here is the truck; here is your car.

The Witness. The truck was coming up there, this way; I was going down this way. It turned in this way so that he hit the left front of my car, and after doing that my car turned this way and he hit the back (illustrating).

The Court. You are hitting the front again.

Q Which is front? A That is the front of his car.

Q Which is the right or left side of his car?

The Court. This is the left of his car, isn't it?

The Witness. No, he turned my car this way, so that the back of my car and the back of his car come this way, and he turned left again and my car come for his this way, and he went down 34th street.

Q All right. Miss Peskowitz, just take these books again. Which do you want to indicate as his truck? A (Indicating).

Q Which half will be the front of the truck?

The Court. Toward her.

Q Which part? A This part is the front.

Q I mean, which of the four sides of the book, of the four edges? A Why, this side is the front.

Q Which is Kramer's truck?

Mr. Chance. The one toward her.

Q Do you mean this is the front? A This is the front of the car.

Q And which—? A And this is his back.

Q All right, hold this. Which is the front of

the —— you have; which is the rear? A (Indicating).

Q All right. This is your car; this is the truck of Kramer; is that correct? A Yes, sir.

Q He was proceeding in the opposite direction before the accident; is that correct? A Yes, sir.

Q Now, will you just place the books, show us how he originally was? I will put them on the desk; then we will lift them up. A (Indicating).

Q You said that the right side of the truck came in contact with the left side of your car. Won't you hold the books to you, show the left side? A I cannot get the books like that, it is this way.

Q Now, may I show the original position to the jury. Is this the position that you have indicated? A Yes, sir; that way (indicating as Mr. Dunn illustrates to jury).

Q This is the truck; this is your car. Is that correct? A Yes, sir.

Q This is the left side of your car? A Yes, sir; of my car.

Q This is the front of the truck? A Yes, sir.

Q Now, while I hold the books, will you put the position that they came into original contact? A (Indicating).

Q Now, what happened to this truck after the original striking? A He turned left, struck on the back of mine.

Q Oh, I don't know whether I asked you, or not. Did you observe the driver of the truck prior to the accident, Miss Peskowitz? A Yes, sir.

Q What was he doing? A He was looking in the rear.

Q Did you see him look forward, toward your car, at any time before the accident? A No, sir.

Mr. Dunn. That is all; take the witness.

Cross-Examination by Mr. Chance.

Q How far away from you was the driver of the truck when you saw him looking to his rear? A Why, I, could demonstrate on that; he was—

Q Don't need any demonstration. How far away from you was the driver of the truck when you saw him looking to the rear? A Why, he was about thirty feet, something like that.

Q How far did you see him travel altogether before this accident? A I saw him quite a distance before I reached Seventeenth avenue. I saw him, well, he was about three-quarters down the block.

Q How far were you from Seventeenth avenue when you first noticed him? A I was about fifteen feet.

Q Fifteen feet distance that you had given me a moment ago when you told me you were quite a ways down the block— A He was quite a ways down the block.

Q Fifteen feet to the north of Seventeenth avenue is where you were when you first saw the truck? A Yes, sir.

Q Did you see anything that would obstruct your passage, had you wanted to turn to the right into Seventeenth avenue, or into East 34th street, to have avoided him? A No, sir.

Q Was there anything in Seventeenth avenue, on the easterly side of Vreeland avenue, that would have interfered with the passage of your car, had you turned it into that direction? A No, sir.

Q Now, you undertook to tell us on the direct examination, and you were stopped, something about your not observing him look towards you at all. A No, sir; he did not look towards me.

Q Now, how far did you see him travel and not looking toward you? A Why, about thirty feet.

Q Why didn't you blow your horn while he was doing that? A Why, I didn't know that he was going to turn around; he did not blow his horn, did not put his hand out, didn't give me any cause to think that he was turning around.

Q He was not coming toward you at all, was he? A He turned back, right suddenly, coming towards me.

Q All of this time that he was turned around, looking the other way, he was coming straight ahead, was he? A He suddenly turned; he made a sudden turn.

Q Yes, but you say he traveled, you suppose, thirty-five feet, turned around and not looking in your direction? Didn't you tell us that? Did you tell us that, or didn't you? A Repeat the question.

Q (Question repeated by stenographer)?

Mr. Dunn. Let her answer.

A Yes.

The Court. She has answered it; she said, "Yes".

Q Why didn't you blow your horn when you saw him coming towards you for thirty-five feet, not looking in your direction?

Mr. Dunn. That is not what she said.

The Court. Thirty feet.

Q All right, thirty feet.

Mr. Dunn. Nor did she say he was going towards her then.

Q Why didn't you blow your own horn? A I did not know he was turning around until he was right on me there.

Q How far do you mean by "right on you" when you first knew that he was turning around? A Why, when he struck my front, hit me.

Q That was the first time he turned around, when he hit you?

Mr. Dunn. Just a moment. I object to the form of the question. Does counsel mean "he" turned around or turned "his car" around, or what does he mean?

The Court. Reframe it.

Q You told us, I believe, that you saw this man when he was right on top of you turn toward you. A No, I did not *see him*.

Mr. Dunn. Just a moment. Do you mean, "turn the car toward you," "turn his head toward you"? What do you mean?

Mr. Chance. I object to counsel trying to interpret the question.

The Court. Objection sustained. If the witness does not understand, she will tell us so. You mean his car, when you say he turned?

A When I saw him turn, I stopped my car immediately.

Q You haven't told me; how far was he from you when he first started to turn his car? A Why, not very far.

Q How far? A Why, he was about fifteen to seventeen feet, something like that, not very far at all, because he was on the first rail; he was not up against the curb on his right side at all, not up against the curb.

Q He was seventeen feet away from you when he first started to turn, was he? A I don't know exactly, but very near.

Q Approximately, that is, yes. Was his car going *perfectly* straight ahead when he was turned around himself? A Yes, sir.

Q Where, with respect to the southerly curb of Seventeenth avenue did you say these two cars actually came together? A Why, after I passed Seventeenth avenue, I was about ten feet off Seventeenth avenue.

Q Suppose you come down here, and talk about the map a little. A (At P-6).

Q Suppose you put—

Mr. Dunn. Wait a minute. Do you understand the map, Miss Peskowitz

The Witness. Yes. I was going down this way; he was going up that way.

Q That is right. Suppose you put "B" at the place where you were when you first saw him. A When I first saw him coming up there—

The Court. Where were you?

A (Continuing) —I was about ten feet from Seventeenth avenue, on Vreeland.

The Court. What is the scale of that map?

Mr. Dunn. One inch equals ten feet.

The Court. Do you understand that, Miss Peskowitz?

The Witness. Yes, sir.

The Court. One inch. If you were ten feet away, why, you were an inch back of that line. Don't mark it.

The Witness. No, I am not marking; I just want to get this right.

The Court. Don't put it on the curb. You were not on the curb. Put it about the front of the center of your car.

A (Continuing) (Witness indicates on map.)

Q Now, put "B" with a "1" alongside of it,

for the place that his car was when you first saw that.

The Court. If that is on the map.

A When I first saw—

Q When you first saw it? A When I first saw it?

Q Yes. A (Witness indicates on P-6).

Q You have got him a little close to the curb, too, haven't you? Make the "B1" as near as you can to the center of his car when you first saw it. Now, "B"— A "1".

Q This is "1"; "B2" is the place where the two cars came together. A (Indicating)

Q Now, then, will you indicate with a pencil line from "B1" the course that his truck took up to the time that it got to the place where the two cars came together? A (Indicating) Do you want—

Q I want you to make a mark which shows the course that his truck took between the time that you first saw it and the time that it came to the place where the accident happened. A (Witness indicates as directed).

Q I think that is all for the map. A (Witness resumes stand).

The Court. Did you see Mr. Riley's car before the collision?

The Witness: No.

Q What direction did your car point when this accident was all over and both cars came to rest? A Seventeenth avenue.

Q Which direction did the truck point when it came to rest? A Why, it was facing—it was in 34th street.

Q Facing southerly? A Southerly, yes.

Q You were facing in a generally northwesterly direction? A Yes.

Q How were the people seated in your car? A My brother-in-law and I in the front; my father was sitting in the spare seat in back of my brother-in-law, and my sister in back of my father, on the back seat; my brother in between, and my mother in the left back, her baby on the lap.

Q What baggage was there in the car? A We had a trunk there.

Q How long had you been driving that morning when the accident happened? A From Suffern.

Q How many miles is that? A I never took notice of that; I do not know.

The Court. How long had you been driving?

The Witness. I was driving about an hour and a half, or so.

Q Is this your father's car that you were driving? A Yes, sir.

Q Bringing the family all home from a Fourth of July party, weren't—or week's end, was it? A Week end trip.

Q Week end trip; you had spent the week end at Suffern, was it? A No, at Parkesville, N. Y.

Q Where is that? A New York.

Q How far from Suffern? A Oh, I don't know.

Q When had you started from there? A About a quarter of six in the morning.

Q Been driving from a quarter of six continuously? A No, sir; we made two stops.

Q Two stops; where else did you stop besides Suffern? A Middletown; we had breakfast there.

Q Who else drove the car besides you? A My father.

Q How far did you drive the car? A Drove from Suffern up to the time of the accident, up to Paterson.

Q Prior to that, your father had been driving, had he? A Yes, sir.

Q I do not suppose you were a bit tired at the time this accident happened? A No, sir; we had all of the time in the world.

Q You had an early start, too, didn't you? A Yes, but we were not tired; we went to bed very early the night before.

Q How did it happen that you took the wheel instead of your father? Was he tired? A No, he was not tired, but I asked him to, because I usually always drive.

Q You usually drive his car for him, do you? A Yes, sir, for business too.

Q For business? A Yes.

Q But this was not a business trip, was it? A No, but I usually drive the car for him.

Q Usually drive for business? A Delivering for him, too.

Q And driving the family home from week end trips, such as that? A Sometimes.

Q I believe you told us on direct examination that your car was hit twice, didn't you? A Yes, sir.

Q What part of your car that came in contact with his car the first time? A It was the right of his car.

Q Right front fender? A Yes, right front fender, I think it was the fender.

Q Well, anyway— A In front of his car.

Q Where was it you came in contact next time on his car? A Back of his car and the back of our car, right side of his.

Q Did you notice whether or not his right rear wheel was broken? A I did not.

Q You were disabled so that you were paying no attention to such things as that, were you? A I should say not.

Q You mean, you should say that you were disabled so that you were not paying attention, don't you? A Not after the accident.

The Court. How far from the point of the collision did his car go?

The Witness. Why, he—

The Court. Before it stopped, if you know.

The Witness: Why, it stopped near the garage or the house on 34th street.

The Court. Well, how many feet would you say that was?

The Witness. About seventy or seventy-five feet.

The Court. Seventy or seventy-five feet?

The Witness. Something like that; I wouldn't say exact.

The Court. So that his wheels could not have been demolished, or he would not have gone there.

The Witness. No, sir.

The Court. All right.

Q You were not so disabled that you couldn't see where he was going, could you? A I don't understand that.

Q Well, if you were so disabled that you were not seeing the things the matter with the truck, how could you tell us where it went to? A Because, after I got up, I noticed the truck on the other side, on 34h street.

Q You do not know whether the truck had been moved there, or whether it went over of its

own power? A It went over, because I heard father shout and he was going ahead.

Q When was it you heard that? A After the accident, after father got out of the car.

Q That was when he was going ahead? A He was still riding ahead and father shouted, "Stop!"

Q How far had your car gone before you heard your father shouting, "Stop!"? A Our car hadn't gone at all; it was smashed.

Q How far had the other car gone when you heard your father say, "Stop"? A It was still going.

Q How far had the car gone, is the question? A He was riding—why, about—I wouldn't say exact—but after he hit us he kept on going.

Q How far had he gone when you heard the cry, "Stop!" is the question? A About twenty feet to twenty-five feet. Something like that. Perhaps thirty, I wouldn't say exact.

The Court. He went as far again before he stopped? He went another thirty-five?

The Witness. Yes, he kept on going; he didn't want to stop.

The Court. All right.

Q Was the turn that he made to his left almost a right angle turn? A Will you explain that question?

Q Withdraw it. When he started to go to his left, did he swing straight across the street or on a curve? A He swung straight across.

Q How many miles an hour would you say he was going at the time you noticed that? A Why, at the same rate, about twenty-two to twenty-five miles an hour.

Mr. Chance. That is all.

HENRY ALBERS, sworn.

Direct examination by Mr. Dunn.

Q Mr. Albers, you are connected with the Police Department, as Sergeant, are you not? A Yes, sir.

Q On August 2nd, 1926, you were connected with the Traffic Bureau, were you not? A Yes, sir.

Q On that occasion, did you have—at that time, did you have occasion to investigate an accident that took place at the intersection of Seventeenth avenue, 34th and Vreeland avenue? A I did.

Q Do you recall when you got to the scene of the accident? A If I remember rightly, it was about 11:40, something like that.

Q At that time, do you recall—did the report come in that there had been an accident at that intersection? A 11:40; I have notes of the time, if I can refer to the police records.

The Court. Well, you do not need to; you are testifying pretty well.

The Witness. All right.

Q When you got to the scene of the accident, what cars did you see there? A I seen both cars concerned—the Peskowitz car and the Kramer truck.

Q Did you see Mr. Kuiper there, the driver of the Kramer truck? A I did.

Mr. Dunn. Is Mr. Kuiper in court?

Mr. Chance. Yes, he is here, that fellow on the end there, next to the end.

Q Is that the gentleman you saw there that day, the driver of the truck? A I believe so, yes.

Mr. Dunn. You may sit down.

Q Did you see Mr. Peskowitz and the others at the scene of the accident and the occupants of their car? A I did.

Q Did you talk with the various people—not what they said—but did you talk to the various people there? A I did.

Q Did you observe any marks in the roadway? A I did.

Q Did you have a talk with Mr. Kuiper with reference to those marks in the roadway? A I did.

Q Now, will you tell us—do you understand this Exhibit P-6? Just come down for a moment. A Yes, sir (at Exhibit P-6).

Q Do you understand this Exhibit P-6? It is on the scale, one inch equals ten feet? A Surely.

Q Have you seen it previously? A No, sir; I just looked over it. I see what it is.

Q The arrow here indicates north.

Mr. Chance. I suppose—you objected to explanations before, about the arrow; he says he understands it.

Mr. Dunn. I did not object to you explaining anything about the map, that I know of.

Mr. Chance. The witness says he understands it, so why have any more speeches about it.

Mr. Dunn. Are you going to conduct this examination, too?

Mr. Chance. I am going to object when I see proper, yes.

Mr. Dunn. You can object.

The Court. Objection sustained.

Q Now, Mr. Albers, will you please show us where you saw the marks on the sidewalk? A The marks of the Kramer truck, right side, right

wheels of the truck, made a turn and come about around in here; in other words, the right wheels were about parallel with the curb line to Seventeenth avenue; they did not at any time enter the intersection of Seventeenth avenue; came right around here, made a swoop in that sort, and stopped about here, parallel with the curb line.

Q How far from Seventeenth avenue is the nearest point that the wheels of the Kramer truck made, or tire marks? What was the nearest point? Seventeenth avenue—what was the nearest point? A Will you ask that question again?

Q What was the nearest point of the mark that you have described to the extended line of Seventeenth avenue? A I would say on a line, on a line—the nearest point to Seventeenth?

Q Yes? A As I said before, this was, if extended out here, the right rear wheels would just touch the curb line of Seventeenth avenue.

Q Did you see the point of contact of the cars, where the contact took place? A Did I see the point of contact?

Q Yes, of the cars, or the marks indicating where the contact had taken place? A Well, that *dot.*

Q Where was that point, about? A In reference to Seventeenth avenue?

Q In reference to Seventeenth and Vreeland avenue, where the two cars came together. A Well, the cars came together about here (indicating). It might have been a foot or two, one way or the other, I would not be exact about that. I saw then that there was some skid marks on the asphalt of Vreeland avenue.

Q Where was the Chandler sedan after the accident? A The Chandler sedan was facing a

westerly direction, slightly southerly, standing along this way.

Q How far from the place of impact? A Not very far, other than the length of the car, being turned in that direction; of course, if it had been proceeding this way, swerved in here.

Q Do I understand you to say it was swerved to the right; is that correct? A To its right.

Q Had the right rear wheel moved any from the time that was indicated at the place of the collision—had the right wheel of the Chandler sedan moved any, in your opinion, from the place that it occupied at the time of this collision? A If any, very little.

Q Now, where was the Kramer truck after the accident? A Standing along here, parallel to the curb, facing south on 34th street.

Q How far from the point of contact or the place of the accident, about? A Oh, sixty or seventy-five feet.

Q Did you have a conversation with Mr. Kuipers? You may go back on the stand. A (Resuming stand). Yes, sir.

Q Immediately after the accident, did you have a conversation with Mr. Kiupers? A Yes, sir.

Q What, if anything, did he say about the accident? What, if anything, did he say he was doing at the time of the accident? A I questioned him in reference to the marks, as I have indicated there, and he acknowledged that those were the marks, of course, they led up to the back of his truck, which was still standing there. I asked him how he happened to make a turn of that kind instead of making a turn into Seventeenth avenue. He said that he thought he had time to get across, and took a chance, but he thought this other car was traveling

faster than it should have traveled, therefore he couldn't get into the intersection.

Q He said he took a chance, didn't he? A Yes, sir.

Mr. Dunn. That is all; take the witness.

Cross examination by Mr. Chance.

Q He said the other car was traveling faster than it should have been traveling, didn't you say? A He said that the car was traveling faster than it should have been traveling.

Mr. Dunn. He said that it was?

The Witness. Yes.

Mr. Chance. Yes.

Q Now, will you come down here and mark on this chart permanent marks so that we can see, after you have left here. Show us the mark that led up to the Kramer car—the Kramer car's marks? A This is as nearly as I can recall it, as far as I am sure.

Q Just indicate where it was, as you indicated it with the ruler? A Say, these are the right wheels—is it all right to go and mark this up?

Q Mark her up, as nearly as you can, the Kramer car's marks; that is what we are asking you? A (Witness indicates on P-6).

Q Now, then, Mr. Albers, mark "A" on this line at the place where the two cars came together? A (Witness indicates as directed).

Q Did you notice any marks behind the Peskowitz' car, to the north? A No, sir.

Q Did you make observations— A I did.

Q —for such marks? A I did.

Q No marks whatever behind it? A No, it might have been just slightly.

Q But, at any rate, you did not notice any? A No, that is, if they had have been brake marks or burn marks, we would have noticed them.

Q And there were no brake or burn marks on that road behind the Peskowitz car when you arrived there? A No, sir. (Resuming stand).

Mr. Chance. I guess that is all.

By the Court.

Q Officer, what was the character of those marks, that you have described, showing the course of the truck? A The right rear made more of an impression than the left.

Q Were they solid tires? A Yes.

Q What was the weather that day? A Clear.

Q It was not wet? A No, sir.

Q But you could see a well defined mark, could you? A Yes, well defined, leading up to the position of the truck.

Q Also leading up to the scene of the accident? A Well, you couldn't say that; that was on the asphalt; it wouldn't leave any plain impression of either mark.

Q So that your only mark is on the scene of the accident where the truck stopped? A Yes, sir.

Q You have no way of knowing then that it described the circle that you described with your pointer, have you, to the curb? I understood you to point all of the way around; you are surmising that? A I did imagine that, due to the fact that I know the truck had proceeded from that direction.

Q Because somebody told you that? A Well, the driver was there, and the marks indicated that he came from there, that direction. I would say

he started from the right side of Vreeland avenue; but he may have started from the center.

Q If you have marked that, you had better mark it out. The reason that I asked that is that the testimony of some of the witnesses is that this car struck the sedan, and then swerved around and changed its course, perhaps by reason of the impact— A Huh-huh.

Q —and if you, however, found a complete arc, that would be important, because it would not jibe with the testimony of those who said that the sedan was struck twice? A Well, as I say, I wouldn't know where from the point of impact, I wouldn't care to say what is the exact course the truck had taken previous to the impact.

Mr. Chance. Suppose we erase this?

Mr. Dunn. Let the witness do that.

The Court. Either that, or the jury will remember that that first part of the arc is his imagination, and not because he saw any marks on the road.

The Witness. Huh-huh.

The Court. I do not know that we need to erase it; the jury will remember that that is the arc put there by the officer, and the first part of it, being his conclusion, should not be there, because that is his speculation.

The Witness. Huh-huh.

The Court. (Continuing). It may be true, but this witness does not know it of his own knowledge.

Redirect examination by Mr. Dunn.

Q Albers, didn't you tell me yesterday that those marks—that the marks of the Kramer truck were never within ten feet of the extended line of

Seventeenth avenue? Didn't you tell me that yesterday? A Ten feet?

Q Yes, sir; in my office downstairs, on the second floor, in the presence of Mr. Werksman, Detective Graves and Mr. Peskowitz? A I don't recall now; I might have said a few feet. I don't know whether I said "ten" or not.

Q Didn't you say it was ten feet, and you knew it because it was a full car length? A What are you referring to, Mr. Dunn.

Q Didn't you tell me yesterday, in my office, in the presence of those people whom I have mentioned, that the marks of the Kramer truck were never within ten feet of the extended line of the curb of Seventeenth avenue? That is what I am referring to? A Ten feet.

Q Yes, ten feet? A I don't remember saying that. I say now that it could have been a few feet; it could have been five feet.

Q Why, didn't you show on a diagram it was ten feet from the intersection of the extended line of Seventeenth avenue? A Did I draw a diagram?

Q Yes? A It is possible. Ten feet is practically nothing when you are drawing a diagram. I could have went out of the way there possibly ten feet by just moving an inch on the plan.

Q Then you beginning on this line may be ten feet from the extended line of Seventeenth avenue; is that correct?

Mr. Chance. I object to that as a leading question.

Mr. Dunn. This is a matter brought out on cross examination by you.

The Court. I will allow it.

Mr. Chance. Leading question; he is your witness, just the same.

The Court. No, the witness on his direct examination, when you first had him tell, said —and then represented it, that the right wheel of the truck was about on an even line with the southerly curb line of Seventeenth avenue, if it had been extended. He has always said that, at the beginning and then indicated it likewise on the drawing.

Mr. Dunn. And he now says that it may be a distance of ten feet away.

Q Is that correct, Mr. Albers? A No, I still say that referring back to the recollection of the accident, that in the presence of Detective Graves there, I said that the tracks were very near on a line with Seventeenth avenue. In other words, as I stated here, the car never entered the Seventeenth avenue intersection.

Q The Kramer truck never entered Seventeenth avenue, did it? A No, sir.

Q Didn't you say that the tracks began ten feet from Seventeenth avenue? Didn't you say that? A Ten feet from Seventeenth avenue?

Q Yes, from the extended line of Seventeenth avenue, if extended? A Ten feet back?

Q Yes? A No, I didn't say that; no, sir.

Q You couldn't see the tracks until the point of contact of the cars; isn't that correct? A Yes, sir.

Q So that the lines up until the point of contact are imaginary lines? A Yes.

Q As a matter of fact, these are granite blocks between the tracks; there wouldn't be any marks on them; isn't that true? A It is very hard to detect them; I did not try to detect them on the blocks.

Mr. Dunn. That is all.

JAMES H. GRAVES, sworn.

Direct examination by Mr. Dunn.

Q Mr. Graves, you are a Sergeant, connected with the Police Department, are you not, of this city? A I am.

Q On August 2, 1926, you also had occasion to investigate this automobile accident with Sergeant Albers, did you not? A I did.

Q What time did you arrive on the scene of the accident with Detective Sgt. Albers? A Why, about five minutes after we got the telephone call, I believe, it was 11:40 or close to that time.

Q When you got there, what cars did you observe? A Why, I observed the Chandler car,—Peskowitz, I believe the name is; it was standing partly on Vreeland avenue, partly on 34th.

Q Did you go with Officer— A With Sgt. Albers, yes, sir, I did.

Q How far was the Chandler car from the extended line of Seventeenth avenue when you got there? A It was in past the intersecting southerly line of the curb on Seventeenth avenue.

Q And about how far from that line, if extended, was it? How far beyond Seventeenth avenue had the Chandler sedan gone? A This imaginary line of the southerly curb?

Q Yes. A It was a few feet, I don't know just how far.

Q It wasn't just on the line, was it? A No, it wasn't just on the line.

Q About? Could you see the place where the collision had taken place at that intersection? A Very plainly.

Q Where was that with reference to the continued line of Seventeenth avenue? How far from that line? A From the southerly curb?

Q The imaginary continuation of Seventeenth avenue? how many feet? A Why, to my knowledge, it was almost the length of the car if not the full length of the car.

Q About a car length from the extended line of Seventeenth avenue? A Yes.

Q That is what you told me yesterday, is it not?

Mr. Chance. I object—

A Yes.

Mr. Chance. —to what he told him yesterday, and ask that the answer be stricken out.

The Court. Objection sustained; strike out the answer.

Q How much do you estimate is a car length? A It depends on the car.

Q What distance did you have in mind when you said a car length from Seventeenth avenue? A About twelve feet—ten to twelve.

Q From that point you could see the marks, couldn't you, Sergeant? A I could.

Q What marks did you observe from there on? A Like the half of a "U", circling back into 34th street.

Q Now, will you just come down from the stand for a moment? A (At Exhibit P-6).

Q Now, if you will—first, do you understand the map Sergeant? A That is north, that is south?

Q This is north, this is south; this would be west, this would be east. This is Vreeland avenue. Paterson—center of the city this way, Passaic that way. This is 34th street. This is Seventeenth avenue, this being east, this west. Peskowitz car going this way and the truck going in that direction. This would be the extended line of

Seventeenth avenue, imaginary line across there. Now, will you indicate to us about where, in your opinion, this accident took place from the marks that you observed on the road? The scale of this map is one inch equals ten feet. I think you said, was a car length, and a car length, you said you figured about twelve feet? A About that, as nearly as I can recollect from that time, it would have been about here—about somewhere in there.

Q If that is the extended line of Seventeenth avenue, about where would it be? A Somewhere in the neighborhood of that.

Q Just put your pencil there. Well, make a mark on it. A About here.

Q Now, would you mind initialing that "JG"? A I have it "J".

Q The point that you have indicated by "X" and the initial "J" is, in your opinion, where the accident took place? A Yes.

Q From that point, will you indicate which way the truck went, that you observed there? A From the Kramer truck?

Q From the Kramer truck, yes. Just move your pencil and make the mark. A It went around like that, that way; truck was standing over here. The truck apparently continued on after the collision and was over standing a few feet away from the curb when I arriver there. It was right near the back of this house, these little cement steps that goes up, in the back, about fifty or sixty feet from the sidewalk there.

Q Indicating the building— A On the corner.

Q —on the southwesterly corner of 34th street and Seventeenth avenue? A Yes, sir; southwesterly corner is correct.

Q What was the position of the Chandler se-

dan after the accident? A Chandler sedan was facing west—

Q Yes? A It had been traveling south in that direction, and it was turned just one quarter of a turn around.

Q Turned from south to west? A Yes, sir.

Q Now, whereabouts was that with reference to the place or point that you have indicated as the point of contact? A Pointing down the avenue, that way (indicating).

Q Where was it located? A Just where they had collided; it had been spun around.

Q Just make a mark there with reference to that, that it had been spun around. A Apparently by the mark on the road, the machines stand something like that.

Q Indicating by an oblong on the map, which is initialed on the map, "JG-1". And it arrived in that position from being spun around at that point?

Mr. Chance. Oh, I object to that, as calling for a conclusion.

The Court. Objection sustained, that is his theory; he can only tell what he found the marks to be.

Q What marks did you see of the Chandler sedan at the place of the accident? A Why, I could see the marks of the front wheels.

Q Where were they? What direction were they? A Where the car had been traveling south, it had been turned on a quarter of a turn by the contact with the car.

Q Did you talk to Mr. Kuipers after the accident, Mr. Graves? A I did.

Q Did you hear what he said, if anything, as to how the accident took place? A. I did.

Q What did he say? A Why, he said he was

coming up Vreeland avenue, with the intention of turning; that he was traveling north on Vreeland avenue with the intention of turning west into Seventeenth avenue, that he got over there, and I spoke to him about getting off or keeping to the right of the center to make that turn; he said he thought he could make it across before this car coming up approached that intersection.

Mr. Dunn. That is all. Take the witness.

Cross-Examination by Mr. Chance:

Q Now, will you just describe for us as fully as you can the mark which you have indicated as leading from the point "JG" on around into 34th street, to the place where it stopped? Was that a continuous mark? A A continuous mark?

Q Yes. A Yes, sir; it was continuous, sort of a side scraping mark.

Q Side scraping mark? A Like if you would take a tire and pushed sideways, to make a circular turn; it had that appearance on the road.

The Court. Was the wheel broken?

The Witness. Why, Mr. Kramer called my attention to it, I believe, *or* the driver, that the axle was knocked out and the wheel was knocked out, too.

The Court. Knocked out?

The Witness. Knocked out of line with the front.

The Court. But was the wheel on?

The Witness. The wheel was on.

Q How about the back wheel? Did you notice that? A Back wheel? I didn't, no.

Q On the Kramer truck, I mean. A On the Kramer truck I am speaking of.

Mr. Chance. I think that is all.

Redirect Examination by Mr. Dunn:

Q Just a moment, I have neglected to ask you. What portions of the Chandler sedan were damaged—what parts? A What parts? Why, the whole car was a wreck; the left side was damaged more so than any—the whole left side.

Mr. Dunn. All right; that is all.

HENRY ALBERS, recalled.

Direct Examination by Mr. Dunn:

Q Sergeant, I understand that you misunderstood my question, and I apologize for my hastiness. What portion of the Chandler sedan—Or, will you tell us where the position of the Chandler sedan and the point of contact on the road, or where the accident took place?

The Court. Well, is there any misunderstanding about that?

Mr. Dunn. I understand—

The Court. Wait a minute.

Mr. Dunn. I am informed that he did not understand my question.

The Court. Well, is there any misunderstanding about that? You put a cross or a mark where the accident happened—

The Witness. I still say so.

The Court. And there is no misunderstanding about that?

The Witness. No, sir.

The Court. No need of going over that again, if there is no misunderstanding about that Don't let's repeat.

Mr. Dunn. No, I do not want to, but I understood that he—

Q With reference to the position of the Chandler sedan after the accident, and the marks, tell us where the position of the marks on the pavement was.

The Court. All right.

Q Can you tell us that, Officer? A As I indicated there, as I understand the point of contact, I will still testify to that, and if the front wheel got up further, which would bring it in line with Seventeenth avenue, the right front wheel would have made that mark, but the rear when it came in contact was back from Seventeenth avenue line, and the entire Chandler car was back off the Seventeenth avenue line.

Q When you say back off the line, you mean the Chandler had cleared— A Entirely cleared.

Q After the accident the Chandler sedan was about ten or twelve feet—

Mr. Chance. I object to that as repetition.

The Court. Objection sustained.

Q Sergeant, what were the damages to the Chandler sedan? A The Chandler sedan was completely demolished, along the left side, particularly.

The Court. What part of the left side?

The Witness. Particularly left front door and the left rear.

Q Was the front of the Chandler sedan damaged? A Some, but not completely damaged.

Q There was no indication on the front of the sedan that it had run into a heavy truck, or anything like that, was there? A No, sir.

Mr. Dunn. That is all.

Cross-Examination by Mr. Chance:

Q The front bumper of the sedan was all bent and twisted, wasn't it? A Not all, it was bent.

Q Considerably bent, wasn't it? A It is just a question of how far considerably would take it; it was bent, but it was not crushed in or anything.

Q Just tell us how it was bent. A It had a bend on it, or an angle of that kind, kink in it,—pulled out in front.

Q And the right front fender was bent at the front too, wasn't it? A Yes, it had a slight bend in it.

Q Were you present when any pictures were taken of that car? A No, I don't know—I don't think we had a photographer; we haven't any pictures here anyway.

Q You mean, the Department have no pictures here? A No, but we took some, I am pretty sure. They should be here.

Q Well, those pictures that you took, did you furnish them to the plaintiff's attorney in this case, I mean? A I did not. I don't know if they had been subpoenaed or not. They might have got our files of that case. I am pretty sure our photographer took them. We generally do, whenever we have an accident. I don't know whether Mr. Graves would bear me out in that, or not; but I thought we had some photographs taken.

Q You don't know whether you did or not? A No, I couldn't say.

Mr. Chance. All right, that is all.

REUBEN PESKOWITZ, sworn.

Direct examination by Mr. Dunn.

Q Mr. Peskowitz, how old are you? A 48.

Q Where do you reside? A Passaic.

Q What business are you in? A Ladies' tailor and furrier.

Q How long have you been so engaged Mr. Peskowitz? How long have you been engaged in that business? A Since sixteen.

Q How long have you resided in Passaic? A Twenty-two years.

Q Been in business there during that time? A Always.

Q Mr. Peskowitz, you owned a Chandler sedan in the year 1926, did you not? A Yes, sir.

Q You purchased it some time before that time, did you not? A Fourteen months before.

Q What condition was it in on the 2nd of August, 1926? A She was in very good condition; in fact, I looked it over just before I made that trip.

Q Where did you go? A Parksville, New York.

Q Who were with you? A My family.

Q How did they happen to go with you? A I asked them to take with me a week end trip.

Q Who was included in the party, Mr. Peskowitz? A My wife, one of my married daughters, son-in-law, single daughter, a boy that was at that time twelve—eleven—and a child of four.

The Court. The eleven year old boy wasn't hurt?

The Witness. No, sir.

Q That was Milton, he wasn't hurt. The baby four and a half years old, that was Dorothy? A Dorothy.

Q Your wife's name is Diana? A Diana.

Q Your daughters are Jennie and Bessie? A Jennie and Bessie.

Q Now, Mr. Peskowitz, as you were going along Vreeland avenue, on your way home, on the morning of August 2nd, 1926, an accident took place, did it not? A Yes, sir.

Q At the time of the accident, your daughter Bessie was driving the car, wasn't she? A Yes, sir.

Q Where were you seated in the car? A On the right hand side, on the small seat, middle seat.

Q It is a seven passenger car, is it not? A Seven passenger sedan.

Q How do you describe that seat that you were sitting on? It is a folding seat, isn't it? one of the folding seats? A Folding seat.

Q What was on the opposite folding seat? A Suit case, children's clothing.

Q Mr. Shapiro was sitting in the front? A Front right; I was in back of him.

Q You were in back of Mr. Shapiro? A Yes, sir.

Q Who occupied the rear seat? A Mrs. Peskowitz to the left, Mrs. Shapiro to the right, boy in the middle, baby in her arms.

Q Who held Dorothy? A Mrs. Peskowitz was holding the baby.

Q Now, Mr. Peskowitz, just tell us what you recall about the accident. A All I know, we were riding on Vreeland avenue, before Seventeenth avenue, my girl slowed down, blowed the horn, and we went to pass by, and I was just looking my side of the road; all of a sudden I heard the blow of the car and a few minutes accident happened.

The Court. You don't mean a "few minutes"?

The Witness. Well, all of a sudden; when I falled out, I really didn't know what happened.

The Court. You were knocked out?

The Witness. Yes, sir.

Q You were knocked out of the car? A Yes, sir; my door opened all of a sudden and the glass fall apart and I was on the dirt.

The Court. You mean, on the ground?

The Witness. On the ground.

Q What did you next observe? Did you get up then? A I got up and I looked and I seen the truck coming and I run after, and I hollered "Stop!" "Stop!" and he did stop. When he come down, I asked him, what made you cut off in front? He said, I can take a chance wherever I want.

Q Were you injured, Mr. Peskowitz? A My hands was cut.

Q Whereabouts was your hand cut? A Middle finger, small finger on this side, whole side was bruised, knee was hurt.

Q What cut your hand? How were your hands cut? A I don't know. I don't know exactly, but I think I pushed my hand through the door, through the window glass that fell out when I fell out with the door.

Q How many stitches were required? A Two.

The Court. How many?

The Witness. Two.

The Court. The doctor said three.

The Witness. Two or three, I don't know.

The Court. All right.

Q The injury to your hand has healed, are they, Mr. Peskowitz? A Healed up after a long time.

Q I beg pardon? A Took a little time for it to heal.

Q Did you experience any difficulty after the accident because of the injury to your hand? A Result of it is when I have to hold the scissors handle, when it is a heavy pair of scissors, I cannot use this size, but I can use the lighter weight, but the heavy scissors I can't use like I used to in my business.

Q The other scissors you can handle without any trouble? A Yes, sir.

The Court. Would you say it may be because you are older.

The Witness. May be.

Q How long did you experience that difficulty, Mr. Peskowitz? about how long? A Oh, since a year.

Q I mean, how long did you have that difficulty because of your injuries to your fingers? A I have that for five weeks.

Q After that, it was all right? that hasn't bothered you since, has it? A Yes—no.

The Court. You can use the heavy shears?

The Witness. I can use it but not as good.

Q Now, how long was your wife laid up approximately? A Well, she was laid up a long time; six or seven months she was in bed, and she never is as she was.

Q When you say she never is as she was, what do you mean by that? A I don't see the use of her and the house as used to done before or to take as good care of me and the children.

Q You mean she cannot do the things she did before. Is that what you mean? A Yes.

Q Now, have you a maid now, Mr. Peskowitz?

A Now we have a maid; yes, sir.

Q How long have you had the maid? A Well, at first, we used to hire a woman to come two or three days a week; now we have to have girl in the house.

Q How long have you had to have the girl in the house? A About a year.

Q Before your wife was injured, did you have a girl in your house then? A No, sir.

Q What does the girl do now? A All of the housework, cleaning, making beds, making breakfast.

Q Does your wife do any of that work? A She used to do but not now.

Q How much do you pay this girl? A $45.00 a month.

Q What about social activities? Does your wife enjoy going out as much as she did before she was hurt? A No, sir. I cannot get her at all, because she is afraid to ride in the car.

Q Afraid to ride in the car? A When I walk with her on the street she stumbles and crosses her legs over until I cross her over, she is afraid for the car now.

Q Does this interfere with her at all, her sleeping at nights, or the injuries? how does that bother her? A Well, at nights she sleeps, but not as always.

Q Does she complain of pains? A She complains of her headache all of the time, complains to me on the back, like on the side, can't *"climb"* over as she used to.

Q What was her condition before the accident, Mr. Peskowitz? your wife's condition before the accident? A She was all right.

Q Did she have any trouble, or make these complaints that she complains of now, before the accident? Did she make any complaints before the accident? A Not often, sometimes would have

a headache, sometimes would say she wanted to be examined by a doctor, but never complained—

The Court. What was her general health before the accident?

The Witness. Very good.

The Court. "Very good," all right.

The Witness. As good as anybody.

Q What about Dorothy? That is the little girl, is it not? A She is all right, only thing she doesn't act the—that a child of that age should act.

Q What were her injuries at the accident? A She was bruised; we even didn't take her to the doctor for treatment.

The Court. She didn't need a doctor?

The Witness. No, sir.

Q Milton wasn't hurt either, was he? A Milton wasn't hurt.

Q He was the boy? A He was the boy.

Q Now, Mr. Peskowitz, what expenses have you had as a result of the accident other than those you have mentioned already? How much, for instance—take the hospital bill—how much did you pay the hospital? Do you recall? A Exactly, I don't know; I have got the bills.

Mr. Dunn. I ask to have these papers marked for the purpose of identification.

The Court. Let them be marked.

(Marked P-7 and P-8 for identification).

Q I show you P-7 and P-8 for identification, and ask you if you know what they are? A There is one bill for the hospital, $68.50, one bill $45.50.

Q Were those bills—how much was the last bill? A $45.50.

Q Were those bills paid by you? A Paid by check.

Mr. Dunn. I offer the bills in evidence.

The Court. Any objection?

Mr. Chance. I do not see that they are admissible in evidence. I object to them.

The Court. No, objection sustained.

Q Did you receive some bills from Dr. Mendelsohn for the treatment rendered your wife? A Yes, sir.

Q Do you know how much those bills were? A For my wife, he sent the bill $565.00; $15.00 for my first treatment; $15.00 for my daughter Jennie's first treatment; $10.00 for Bessie.

Q Do you recall, did you receive any bills from Dr. Koven? A Yes, sir.

Q Do you recall, what were the amounts of those?

The Court. Just a minute. Whom did you say the $565.00, for you?

The Witness. My wife.

The Court. I mean, to your wife. Fifteen for you?

The Witness. Fifteen for me, fifteen for Jennie, ten for Bessie.

The Court. But you didn't pay Jennie's, did you?

The Witness. I paid her.

The Court. Oh, you paid her?

The Witness. She was with me, we all come to the doctor's.

The Court. I do not think that is admissible.

Mr. Werksman. That one item should go to her husband, I suppose.

The Witness. But I paid for it.

The Court. You are sure it was fifteen you paid for Jennie?

The Witness. I got bills, fifteen was for Jennie.

The Court. Ten would be nearer right for Jennie.

Mr. Dunn. Ten was for Bessie.

The Witness. Ten was for Bessie.

Q Fifteen for Reuben? A Fifteen for me, fifteen for—

Q Now, did you also receive some bills from Dr. Koven of Passaic? A Yes, sir.

Q Did you pay those bills? A Yes, sir.

Q Do you remember how much they were? A I paid $48.00 for Bessie, $84.00 for mine, $176.00 for my wife.

Q Now, did you pay any bills to any nurses? A Yes, sir; a lot of them.

Q What bills were those?

Mr. Chance. Now, I object to these, because it doesn't make any difference, in the first place; it is immaterial whether he paid any bills, or not, to nurses; secondly, he cannot tell us whether they were reasonable charges, or not, and I do not know that he is qualified to tell us about them.

Mr. Dunn. I think under the cases, it is held that they are admissible, that it is some evidence, and whether it is reasonable or not is for the jury to say, but the fact that he paid a certain amount to somebody is some evidence.

The Court. I think so; I will allow it.

Mr. Chance. Note my objection.

The Court. You may have it. (To the witness). What did you have to pay the nurse?

The Witness. There is the bills there.

The Court. You do not recall?

The Witness. I don't remember; I have bills.

Mr. Dunn. I ask to have these papers marked for the purpose of identification.

The Court. All right, let them be marked.

Mr. Chance. How much do you claim you paid? Maybe we can admit it. I will admit you paid that much. That is a reasonable charge for the services rendered indicated on it. Just read it into the record.

Mr. Dunn. Mrs. Peskowitz, at the Barnert Hospital, to M. J. Emily, registered nurse, August 2nd to August 9th, $42.00, received payment $42.00, bill for that amount. Similarly, August 2nd to August 8th, another nurse, Helen Carden, registered nurse, $42.00 for that week; that is the same week.

Q Who was Hilma Olson? A That was masseuse.

Q Masseuse? A There is many massage bills I haven't got, morning eight o'clock, evening six o'clock, two dollars every time they come, but I have never got any bill.

Mr. Dunn. I ask to have these marked for identification.

(Marked P-9 and P-10 for identification).

Q I show you two exhibits for identification and ask you what that is? A That is, we had masseuse to come to my wife, that was her charges, then she left on vacation, sent one of her friends to massage, which she didn't send me original bills at all, but I paid her cash all of the time, but one time I didn't pay her so much, about twenty dollars, she gave me bill for that.

Q These papers are receipts for the amounts paid?

Mr. Chance. It doesn't make any difference whether they were reasonable charges, but I will admit that he paid $32.00.

The Court. $32.00 for massages, all right.

Q Now, did you have any other charges that you know about, Mr. Peskowitz? A I paid out a lot for medicines which I never get bills for that treatment; I paid more for massage that I never have got bills.

Q I beg pardon? A I paid another masseuse about six months straight (inaudible).

Q I beg pardon? A I paid another masseuse another six months' bill, but I haven't got bill; I paid her cash all of the time.

Q Did you have any nurses at home? A Yes, sir.

Q What were their charges? A $45.00 a week, I think, I paid nurse that was with my wife for three or four weeks straight.

Q Have you any bill for that? A I have no bill.

Q Where did you get that nurse, through what agency? A Through the Paterson "Nursery."

Q Miss —— up on Eighteenth street? A "Nursery."

Q Did you since yesterday try to ascertain through them the name of that nurse? A Well, I tried, but I cannot locate her.

Q How long did you have her? A She was with my wife in my house about four or five weeks.

Q How much did you pay her a week? A $45.00 a week.

Q What was the condition of your wife's clothing after the accident, Mr. Peskowitz? A It was torn.

Q How was it torn? A It was torn in the hospital we had to cut to take it off.

Q Have you any idea about what the value of her clothing was that was damaged at this time of the accident? A Well, she had a coat on which I bought wholesale $39.50, had a dress wholesale

$22.50—I don't know what it was worth; I know they cut everything on her to take off the clothes; they couldn't take off the clothes otherwise.

Q I think I asked you what the condition of your automobile was before the accident; but, if I did not, I will ask you again. What was its condition before the accident? A It was in very good condition before the accident.

Q What was its condition immediately after the accident? A It looked very bad.

Q What was the matter with it? A It was all smashed up.

Q About how far had you driven the car from the time you bought it? A About 7,800 miles.

Q I think you said you bought it fourteen months before that? A Fourteen months before that.

Q What did you pay for it? A $2,250.00.

Q What kind of shape was it in at the time of the accident? What kind of condition was it in before the accident? A It was all right.

Q What was it worth about, before the accident, in your opinion? A I have been offered by Mr. Newkirk, from whom I bought the car, $1,250.00.

Q In your opinion, was that a fair value for it? A I didn't want to give it to him.

Q I beg pardon? A I didn't want to give it to him, I didn't.

Q You didn't want to sell it? A I felt it was good enough.

Q In your opinion, it was worth more than that; is that correct? A Yes, sir.

Q What was it worth after the accident, in your opinion? A $50.00 for junk.

Mr. Dunn. That is all. Take the witness.

Cross examination by Mr. Chance.

Q This car you used for business and pleasure during the time that you had owned it, did you? A Yes, sir.

Q When did you buy it? A 1924, late 1925 model.

Q Did you have some other car that you used for pleasure during that time? A No, sir.

Q Did you have some other car that you used for business? A No, sir.

Q Well, is that the car that was involved in an accident that happened at the corner of Hamilton avenue and Madison street on the 14th day of July, 1925? A Yes, sir.

Q It is? A Yes, sir.

Q Is that the same car that was involved in the action between Alice Peskowitz and Abraham Peskowitz, by their next friend, Reuben Peskowitz, and Reuben Peskowitz, individually, against Harry ———, pending at that time in the Passaic County Circuit Court?

Mr. Dunn. I object to the question on the ground it is irrelevant and immaterial.

The Court. I think it is material, because he wishes to show from the testimony in that case something. He wants to identify the car. On that theory I think it is admissible. You may answer.

A Yes, sir.

Q Same car that was involved in that action? A Yes, sir.

The Court. What was that, July—when was the accident?

Q July 14, 1925? A Yes, sir.

The Court. Car was new then, wasn't it?

The Witness. It was new.

Q At that time, did you make a claim that the car was totally demolished by that accident? A No, sir.

Mr. Dunn. I object, if your Honor please.

A (Continuing). No, sir.

The Court. I suppose he is going to connect it up.

Mr. Dunn. He is probably referring to some pleadings of counsel with reference to the accident.

The Court. I do not think he *is*—

Mr. Chance. I am going to introduce in evidence the pleadings in this case—

Mr. Dunn. If your Honor please, that is not admissible.

Mr. Chance. I shall offer them, and then we will have a ruling on that. Shall I actually produce them from the County Clerk's Office?

The Court. No.

Mr. Chance. I offer to put in evidence in the case a complaint in which Mr. Reuben Peskowitz makes claim that that car was totally demolished by that accident.

The Witness. Never did—

Mr. Dunn. Now, I want to object to that.

Mr. Chance. I can present the paper after the noon recess.

Mr. Dunn. You are making this offer, at this time, over my objection.

Mr. Chance. No, I will withdraw the offer now, and I will produce the actual records this afternoon and offer them.

The Court. All right.

Q Well, what did happen to the car in that accident?

Mr. Dunn. Objected to, if your Honor please, as irrelevant and immaterial.

The Court. I think it is relevant.

Mr. Dunn. Improper cross examination as well.

The Court. Oh, no. He said the car was in very good condition in August, 1926.

Mr. Dunn. Yes, sir.

The Court. I think that this has some relevancy with respect to that. It is proper cross examination. I will allow it.

Mr. Dunn. Your Honor will allow us an exception.

The Court. You may have it.

Q How was the car damaged by the accident that happened in 1925? A Car damaged in the front, axle was bended.

Q Is that all that you recall? A Front headlight, windshield, I think, and the door.

Q Door? A That is busted.

Q Anything else? A I don't remember.

Q That is all you remember? A That is all I remember.

Q Now, was this car involved in any other damages? A No, sir.

Q At any other time? A No, sir.

Q Between the time of your purchase and the accident in this case? A No, sir.

Mr. Chance. I guess that is all.

Redirect examination by Mr. Dunn.

Q Mr. Peskowitz, some reference has been made to an accident that took place in July, 1925? A Yes, sir.

Q After that accident, what, if anything, was done to the car? A Fixed it up in the best shape —new axle—

Q Beg pardon? A New axle, new wheel, new radiator, new *door*, everything fixed up brand new; I had a bill for $180.00 for fixing that car.

Q Do you recall who fixed it, Mr. Peskowitz? A The Chandler company.

Q Who? A The Chandler company, Mr. Newkirk.

Q Same company with which Mr. Newkirk was salesmanager? A Yes, sir.

Mr. Dunn. That is all.

Re-cross examination by Mr. Chance.

Q I would like to ask one or two questions. In the complaint in this present case, you claim, according to the record here, that you were obliged to expend divers sums and incur divers debts for the repair of said automobile; is that so?

Mr. Dunn. I object to that, if your Honor please, and, at this time, I move to amend, to include loss of the car, which we claim was wrecked and damaged as the result of this collision.

The Court. Is there any objection to the amendment?

Mr. Chance. I haven't any objection.

The Court. Let it be amended accordingly.

Q Well, you didn't spend anything on your car, did you? A No.

The Court. After this last accident.

The Witness. After this last accident? No, sir.

Q Did you tell your lawyer that you had when this case was being started?

Mr. Dunn. I object to that, if your Honor please—

A No, sir.

Mr. Dunn. —irrelevant, immaterial.

The Court. He has answered it; I will let it stand. He says, "no."

Mr. Chance. That is all.

By Mr. Dunn.

Q Just one moment, Mr. Peskowitz.

Mr. Dunn. I ask to have this paper marked for the purpose of identification.

The Court. Let it be marked.

(Marked P-11 for identification).

Q Mr. Peskowitz, I show you paper marked P-11 for identification, and ask you what this is? A I think that is the man who towed in the car from the place to his garage.

Q From the place of the accident, off the street, to the garage? A Off the street to the garage.

Q How much was that? A $10.00; $10.00.

Mr. Dunn. Thank you; that is all.

JACOB LEVINE, sworn.

Direct examination by Mr. Dunn.

Q Mr. Levine, what is your business? A I have a garage—

Q Speak up loud. A I have a garage at 75 Jefferson street.

Q Passaic? A That is right.

Q Did you see the car of Mr. Peskowitz shortly after the accident on August 2, 1926? A Yes, I saw the car, I think it was, about a month and a half late.

Q When was it brought to your place? A Well, I believe they called us up some place in Paterson; one of my other drivers went away with the wrecker.

Q When, Mr. Levine, was it brought there? A I don't remember what date.

Q About what date? How long after the accident? A Oh, same day that the accident happened.

Q Oh, the same day? A Yes.

Q What was its condition when it was brought there? A I believe it was brought from Paterson some place to my garage.

Q What was its condition— A Condition was pretty bad. When he brought it up, I am supposed to put it away in the corner then, but I believe in a day or two they call me up, and they told me they want to take picture of the car, and a man came up to take—

The Court. Do you want all of that?

Mr. Dunn. No. All I want to show is the condition of the car.

Q What were the damages to the car? A Damaged to the car? It was the whole front of the motor was pushed out, and the back was—body was just caved right in; you couldn't *"boost"* the car.

The Court. Couldn't what?

The Witness. Couldn't do anything.

Q I am not talking from a mechanism standpoint. What did you see when you looked at the car? A Car was badly wrecked.

Q What portions were? A In the front on the back.

Q What? How were the sides? A Well, she got hit this way, see, this is the front, where the door is.

Mr. Chance. I object to the witness' telling how it got hit.

The Court. Objection sustained.

Q Where did the car get hit? A Huh?

Q Where did the car get hit?

Mr. Chance. I object to that.

The Court. Objection sustained.

Q What was the condition of the left side of the Chandler sedan? What was the condition of the left side of the Chandler sedan? A Very bad, very caved in front.

The Court. Caved in? Well, the front or the side?

The Witness. Front and the—

Q You saw the front, back and the side. Now, which was caved in? A Yes, most that was caved in was that in the back.

Mr. Dunn. That is all.

Cross examination by Mr. Chance.

Q Did you say you took some pictures of this? A Not me, somebody else took the pictures.

Q Who was present when those pictures you talk about were taken? A Who was present?

Q Yes, A Well, we pushed the car out and the man took the pictures.

Q Who is "we"? A Couple of fellows, we couldn't pull the car.

Q Mr. Peskowitz there, was he? A No.

Mr. Chance. All right.

By Mr. Dunn:

Q Mr. Chance there?

Mr. Chance. Who?

Q Mr. Chance? A I never saw him.

Q Or Mr. Kramer? Does he look like the man that was there? A No, I don't believe it.

Q Eh? A It didn't look like it.

Mr. Dunn. That is all.

By Mr. Chance:

Q How about it? Any of the jury there? A (No answer).

The Court. That is all.

Mr. Chance. I would like to ask Mr. Peskowitz one more question, if I may.

Mr. Dunn. Mr. Peskowitz, stand up; he wants to ask you a question.

REUBEN PESKOWITZ, recalled.

Cross examination by Mr. Chance.

Q Have you pictures showing the condition of your car after this accident? A Yes, sir.

Mr. Chance. That is all.

Mr. Dunn. Will you admit them, if we produce them, without the photographer?

The Court. Doesn't need to; you don't need the photographer.

Mr. Dunn. That is all, Mr. Peskowitz.

MRS. DIANA PESKOWITZ, sworn.

Direct Examination by Mr. Dunn:

Q Mrs. Peskowitz, you are the wife of Reuben Peskowitz, aren't you? A Yes, sir.

Q Please keep your voice up, because all of these ladies and gentlemen want to hear what you say. A Yes, sir.

Q Is this your first time in court? You have to speak out louder than that. Don't shake your head; say yes or no. You are the wife of Reuben Peskowitz, are you, Mrs. Peskowitz? A Yes, sir.

Q How old are you? A Forty-seven.

Q You were born in Russia, were you not?

The Court. "Yes, sir".

Q Where were you married? A Yes, sir.

Q You were married there also, were you not? A Yes, sir.

Q How long have you been living in Passaic? A Twenty-two years.

Q Your husband is in the tailoring business in Passaic, is he? A Yes, sir.

Q How many children have you, Mrs. Peskowitz? A Six.

Q What are their names? A First one is Jennie.

Mr. Dunn. I will withdraw that question for the moment.

Q Jennie, wife of Mr. Shapiro is one? A Yes, sir; Bessie.

Q Bessie is two? A Louis—

Q Leave him out; we will omit those who are not here. A Louis.

Q Milton? A Milton.

Q And Dorothy? A Dorothy.

Q Now, on the 2nd of August, 1926, you and your husband and the family had been up to Parksville, New York, had you not? A Yes, sir.

Q And you were on your way back to Passaic when an accident took place in Paterson; isn't that correct, Mrs. Peskowitz? A Yes, sir.

Q Now, where were you riding in the machine at the time of the accident? A In the left, in the back, on the left side.

Q Where was Dorothy? A On my lap.

Q Dorothy, I think, was then four and a half years old, wasn't she? A Yes, sir.

Q Who was sitting alongside of you? A My daughter, Mrs. Shapiro.

Q Where was Milton sitting? A In between.

Q Between you and your daughter? A Yes, sir.

Q Where was your husband sitting? A On the chair in the middle.

Q One of the folding chairs? A Yes, sir.

Q In front of your daughter? A Yes, sir.

Q Where was Mr. Shapiro sitting? A Mr. Shapiro used to sit with my daughter, Bessie, in the front.

Q Bessie was driving? A With Mr. Shapiro.

Q Mr. Shapiro was on her right, on that seat; is that correct? A (No audible response).

Q Now, when you were going along Vreeland avenue, in Paterson, that is where the accident took place, isn't it? Just say yes or no, so the stenographer can get it. A Yes, sir.

Q What was the first thing you knew of the accident? A I don't know nothing; I didn't see it.

Q What happened? What do you remember happening? A I don't remember nothing. I remember the shock, and I don't know nothing, where I am.

Q What did you see? what did you hear? what did you feel? A I was on my bed in the hospital.

Q You came to in the hospital? A In the hospital.

Q How long after the time you had been riding on Vreeland avenue did you come to in the hospital?

Mr. Dunn. Withdraw that.

Q When you came to in the hospital, what time of the day was it, about? A About half past—quarter to twelve.

By the Court:

Q Now, when you found yourself in the hospital, what time was it then? A Oh, about two hours later.

By Mr. Dunn.

Q About two hours later? A About two hours later.

By the Court.

Q You do not know what happened before that? You do not remember the accident? A No, I don't remember nothing, but that I was, I found out I woke up when I was in the hospital.

Q No; but what was the last thing you remembered before that? A Before the accident, you mean?

Q Yes; don't you remember being struck? A I remember—

Q Being hurt. Do you remember being hit? A I said I was hurt.

Q Do you remember how you got hurt? A How I got hurt?

Q Yes. A Sure, I remember how.

Q How do you know? A Me—

Q No, how do you know how you were hurt?

By Mr. Dunn.

Q You were riding in an automobile? A Yes.

Q What is the last thing you remember? A I remember big shock.

Q Big shock? A Big shock; then I was unconscious.

Q Then you were knocked unconscious? A I didn't know nothing.

Q When you woke up in the hospital, Mrs. Peskowitz, did you have any pains? A I don't work up in the hospital.

Q When you came to? A Oh, to my mind.

Q When you came to in the hospital, did you have any pains? A Terrible pains.

Q Whereabouts were your pains? A My pains were in my arm.

Q Where else? A In my rib was broke.

Q Your rib? A My hip.

Q "My hip"? A My left knee.

Q Your left knee? A Yes, sir.

Q Which was your arm, your right or left arm, that was hurting you? A Left arm.

Q Which hip was it, your right or left hip? A Left hip.

Q Then, what doctor took care of you, Mrs. Peskowitz? A Dr. Mendelsohn.

Q Dr. Mendelsohn? A Yes, sir.

Q What did they do to your arm? What did they do to your arm? A Why, they set it.

Q They set it? A Yes.

Q Then what did they do? A He dressed it.

Q A cast? A Cast was put on.

Q How long was it in the cast? A About six or seven weeks.

Q Did they also treat your hips, your back and your knee? A Terrible pains.

Q Did you have much pains from these injuries, Mrs. Peskowitz? A Terrible pains.

The Court. Take a recess to two o'clock.

(Noon Recess)

April 11, 1928; 2:00 P. M.

Q Do your injuries still bother you? A Yes, sir.

Q Where do you have the pains now? A In my arm.

Q Beg pardon? A In my arm.

Q In your arm? A And in my hand, left knee, and in my—

Q Just speak a little louder, Mrs. Peskowitz. A In my arm, and in my left knee, and in my left hip. I can't bear down, it hurts.

Q Speak as loud as you can, Mrs. Peskowitz. A It hurts my arm, my arm hurts me terrible; my

knee feel like hurt through there, I cannot walk a block, one block, two blocks, that is all, and my hip in the back.

Q Your right or the left hip? A The left.

Q Left hip. A And the left knee.

Q Now, Mrs. Peskowitz, just put your—back there, and just stand up, will you? A (Witness stands up).

Q Just show us how you can raise your left arm? A (Witness illustrated).

Q Raise it away from your body. Do you have any pains when you go to raise your arm? A Terrible pains.

Q I beg pardon? A Terrible pains.

Q Just show the jury where you have the pains in your arm; just point to it? A Over here.

Q All right, you may sit down. Are you able to do your work around the house, Mrs. Peskowitz? A No, I can't.

Q Before this accident, did you do your work around the house? A All of the time.

Q Since the accident, what do you do about the work in the house? Who does that? A A girl does the work.

Q Did you ever have a girl for that work before? A No, I used to do myself.

Q I beg pardon? A I used to do myself.

Q Before the accident, you did have somebody do the laundry work, didn't you? A Laundry work—

Q But the rest of the work, you did yourself, didn't you? A Myself all of the time.

Mr. Dunn. That is all; take the witness.

Cross-Examination by Mr. Chance:

Q You didn't see anything of the accident? don't know how it happened, do you? A No, I see myself in the hospital.

Mr. Chance. That is all.

MRS. JENNIE SHAPIRO, sworn.

Direct Examination by Mr. Dunn:

Q Mrs. Shapiro, you are a daughter of Mr. and Mrs. Peskowitz, are you not? A I am.

Q You are married to Mr. Shapiro? A I am.

Q Who was on the stand yesterday? and you now reside in Brooklyn? A Yes, sir; Brooklyn.

Q And you have resided there for some time? A Yes.

Q On the 2nd of August, 1926, you were a passenger in the Chandler sedan of your father's, were you not? A I was.

Q At the time of the accident? A Yes, I was.

Q Now, what seat in the car were you occupying? A I was in the rear.

Q Rear seat? A On the right hand side.

Q Your mother was on the— A Left.

Q —left side, in the rear? A In the rear.

Q Between, your brother? A My brother.

Q That is all? A Milton.

Q You have heard the testimony about the position of the others in the car; that was the position that they occupied, wasn't it? A Yes, it was.

Q What do you know about the accident, Mrs. Shapiro? A I didn't see the accident. I was staring out of the window on the right hand side, where I was sitting, and as we came to Seventeenth avenue, my sister blew the horn, and slowed down. Well, the next thing I felt the car stop, and then I heard the crash. That is all I knew about it until somebody said to me, get out of the car, lady, and as I tried to raise I felt that my legs are paralysed; and I said, I can't get my, my legs are paralysed. I think it was two men who tried to assist me out of the car, and as they did my head began to pain very much, and I felt a

throb in my left temple, which I understand was very much hurt.

Q Were you cut? A Yes, I still have a mark on my left hand where I was cut.

Q Was that stitched up? A No, it was not.

Q What else happened to you with reference to any injuries you received? A Well, I had some cuts on my left hand, that is, on my arm.

Q Left arm; yes? A And I had a very large swelling on my left temple, and I had some cuts in the back, that is, in my back.

Q What caused those? A Glass.

Q Glass. On the left side of your car, what happened to the glass on the left hand side of the car? A Well, there wasn't any glass left.

Q Knocked out, was it? A Yes.

Q How was the right hand side of the car? A Well, I really couldn't say. I didn't look about the car at all, I was so excited about the whole accident that the car and everything about it didn't interest me at all, except the passengers in the car who were hurt.

Q Your mother was one of those? A Yes, she was very badly injured.

Q You assisted, did you not, in getting her from the car, etc.? You were there at the time, were you not? A Yes, I was there at the time.

Q She was later taken to the hospital? A Yes, in an ambulance.

Q You received first aid treatment at the hospital? A Yes, Dr. Mendelsohn's office.

Q In Dr. Mendelsohn's office, then you went on over to Brooklyn, did you not? A Yes, with my husband.

Q Your husband is connected with what hospital? A Jewish Hospital in Brooklyn.

Q You got some treatments there? A Yes.

Q There was no charge for those treatments, was there? A Yes, no change for those.

Q So far as your injuries are concerned now, you are recovered, are you not? A Yes.

Q How long were you laid up as a result of your injuries, Mrs. Shapiro? A Well, the thing that worried me most was the cut on my left hand, because I couldn't do my work.

Q What kind of work do you do? A Well, I mean the house work, and then I play, and that worried my quite a lot, because I couldn't play the piano for the time, and I went down to the hospital and got several treatments on my right hand, and then it was all right after that time.

Q When you speak about playing, what kind of playing do you do, Mrs. Shapiro? A Piano.

Q Do you give any recitals? anything of that sort? A Why, no, I don't, but I have been teaching for a while.

Q How long did that interfere with your teaching? or did it interfere with your teaching? A Well, that didn't interfere with my teaching, but the sight of myself there I was very nervous about the whole matter, because I couldn't be in attendance with my mother; I had to be away in Brooklyn and I could only come once in a while, and the accident to my mother made a very deep impression on me.

Q By reason of the accident, did you lose any money from your teaching, or not? A No.

Q You are all right, now, are you? A Yes.

Mr. Dunn. That is all; take the witness.

Mr. Chance. No questions.

Mr. Dunn. You admit, do you not, Mr. Chance, that Mr. Kuiper was driving the car for Mr. Kramer? I think you so state in your answer.

Mr. Chance. I don't know what the answer says, but I admit now, for the purpose of this trial, and the record, that at the time of the accident involved in this suit, Jacobus Kuiper —I don't know how you pronounce it—anyhow, the fellow named then was driving this car for Lawrence F. Kramer, Incorporated.

The Court. Plaintiff rests?

Mr. Dunn. Just one moment. Do you admit these?

Mr. Chance. No, I do not admit the pictures. I would like to have somebody swear when they were taken, things like that. I do not insist that the photographer be here, of course, but I think somebody ought to swear when they were taken. Or, if counsel will state that they were taken after this accident, I will admit them on counsel's statement.

Mr. Dunn. I do not know how long after they were taken, and we haven't the photographer here, but they were taken shortly after the accident.

Mr. Chance. Who knows? Don't Mr. Peskowitz?

Mr. Dunn. I do not think anybody here knows.

REUBEN PESKOWITZ, recalled.

Direct examination by Mr. Dunn.

Q Mr. Peskowitz— A Yes.

Q —without taking the stand, you were not present when these pictures were taken, were you? A No, sir.

Q Will you look at them? Do they represent

the condition of the car after the accident, before anything was done to it? A Yes, sir.

Mr. Dunn. I offer the pictures.

The Court. All right, let them be received and marked.

By Mr. Chance.

Q That is, after this accident that is involved in this suit? A In this suit.

Mr. Chance. All right.

(Marked Plaintiff's Exhibits P-12, P-13 and P-14 in evidence).

The Court. Plaintiff rests?

Mr. Dunn. Plaintiff rests.

PLAINTIFFS REST.

DEFENDANTS' CASE.

Mr. Chance. I will call Mr. Lippman.

Mr. Werksman. We will admit that, without calling Mr. Lippman, your Honor.

The Court. It is admitted that this is the correct file from the files in the County Clerk's Office, in the case in which it is entitled?

Mr. Werksman. Yes.

The Court. Very well.

Mr. Werksman. I will further admit that this was prepared in my office.

The Court. Very well.

Mr. Chance. All right, then you do not need to go up there, Mr. Lippman. Now, I wish to offer in evidence the complaint which Mr. Lippman has produced and which Mr. Werksman admits is an original record in the case of Alice Peskowitz, etc., plaintiffs, *vs.* Harris—.

Mr. Werksman. Will you admit the answer filed in that case?

Mr. Chance. No, I will not admit the answer, because the answer filed by someone else is no admission by us, but allegations made by them, by Reuben Peskowitz, in that matter, are admissions of his that are here admissible, it seems to me.

Mr. Dunn. Now, if your Honor please, the situation as it just develops is that, as was pointed out this morning. Counsel is attempting, by the offer of a complaint, to show that there is some contradiction between something this plaintiff has testified to and a complaint drawn by his lawyer in another matter. Now, what relevancy or bearing, or how it is material to the issues in this case, I cannot conceive.

The Court. Except this, that he said that his car was in perfect condition, or practically perfect condition, before the accident, and he says that as the result of an accident on July 14, 1925—if that is the date?

Mr. Chance. That is the date.

The Court. —it received certain damages. it was not demolished, but was repaired at a cost of $180.00, that its damaged condition was the headlights and the windshield, front axle, and the door, and that he caused the Chandler people to replace the damaged parts by new parts and put it in shape.

Mr. Dunn. That is true.

The Court. Now, if in his declaration or complaint in another suit, he said to his counsel that his car was demolished, I think it is evidential, because counsel has called my attention to Wigmore on "Evidence," that holds

that it is evidential. I had thought not, but in view of the authority that has been submitted, I think it is evidential, to rebut the testimony of the plaintiff here that has been given. I will allow it, and grant you an exception.

Mr. Chance. Of course, this being an original record, I suppose that we cannot make any marks, but we could refer to it as—

(Known as Exhibit D-1 in evidence).

Mr. Chance. —D-1, which is the files, or the complaint, in case No. 10056, Passaic County Circuit Court, and there is only one part of this that I am particularly anxious to get it, and it is not necessary to read the whole thing, I suppose.

The Court. All right.

Mr. Chance. —the fourth paragraph of the first count, which says: "Yet the defendant, disregarding the duty as aforesaid, drove his car at a reckless rate of speed, on the left side of the road, without giving warning whatsoever, did collide with and smash into the plaintiff's—Reuben Peskowitz'—car, with such force and violence as to totally demolish the said car, to his great loss and damage."

JACOBUS KUIPER, sworn.

Direct examination by Mr. Chance.

Q On the 2nd of August, 1926, by whom were you employed? A Mr. Kramer.

Q You were driving his truck on the day this accident happened, were you? A I was.

Q What kind of a truck was that? A Kissel truck.

Q What kind of a body? A Open body.

Q Well, what capacity was this truck? Just

describe the truck a little more in detail, if you can? A I think it was a two or a two and a half ton truck.

Q Describe the construction of this open body that was on the truck? A Open body was just had sides no top to it.

Q What was the sides of that open body? A I don't know what you mean.

Q Well, were the sides wood or iron? A They were wood with iron bars.

Q About how high would you say it was from the bottom of the truck body to the top of the parts on the side? A About a foot and a half or two feet.

Q How thick were those sides? A An inch wood, if I am not mistaken.

Q What kind of iron reinforcement was it you mentioned? A There were iron bars on the inside of the truck, holding them side braces.

Q What color was this truck painted? A Red.

Q On the date of the accident, what street were you traveling on when the accident happened? A Vreeland avenue.

Q What time of the day did the accident happen? A About 11:30.

Q You were proceeding in what direction? A North, on Vreeland avenue.

Q What side of the street? A On the right hand side.

Q Now, at the time the accident happened, were there any other vehicles in the neighborhood? A Only one.

Q That you observed? A That was only one.

Q Where was that? A That was the one coming towards me on Vreeland avenue.

Q That is the one that you subsequently learned was Mr. Peskowitz' car? A Yes, that is the one.

Q That is the one that was in the accident with you? A Yes, sir.

Q Now, you just tell us, in your own words, what took place at the vicinity of Vreeland avenue, East 34th street, and Seventeenth avenue, at the time this accident happened? A Well, I was going up Vreeland avenue, towards Seventeenth avenue, and as I neared the corner, I was just about on the—just at the beginning of the sidewalk; I saw Mr. Peskowitz' car about the beginning of "E" on the "avenue."

Q All right (indicating).

The Court. A, he said.

The Witness. E.

The Court. E.

Q There are two "E's" in here.

The Court. Which one?

A The first one.

Q Starting which way? This one? A No, the the next one, that is.

Q Q All right. You saw Mr. Peskowitz' car there. Go ahead. A As I had plenty of time to turn, I started to turn. Well, as I started to turn almost my front was pointed in Seventeenth avenue. What made me look back or towards the side, I don't know, but I did look, and I saw this other car right on top of me, so I made a left turn, and that is when they hit me.

Q The other car? Do you mean Peskowitz' car? A What do you mean?

Q You said "this other car was on top of" you? A That is the one, Peskowitz' car.

Q Maybe, if you will come down here and point this out on the sketch, we will make that plain?

A (At Exhibit P-6). Going up this here way, right about here, I saw Peskowitz' car over here; I thought I had plenty of time to turn, so I started to turn this way. Just as I got over here, I happened to look this way, and I saw the Peskowitz' car right here (indicating).

Mr. Dunn. Just a moment, I suggest that these points be indicated on the map.

The Court. You can have him do that on cross examination, if you wish.

Mr. Dunn. All right.

A (Continuing). So I happened to look over there, and I saw this Peskowitz' car over here, so I turned this way; that is when they hit me, when I was about over here (indicating).

Q Now, then, you have said about here, indicating somewheres around the end of the word "Vreeland" on there. Suppose you identify, as nearly as you can—using your pencil—as nearly as you can where that would be on this map, remembering that one inch equals ten feet, and that north is in the direction indicated by the arrow? A Right here (indicating).

Q Now, you are putting—don't get the same marks somebody else has made—put "K" down there. A (Witness indicates as directed).

Q Now, at the time that you were at the place that you have indicated "K," where on Vreeland avenue, was the Peskowitz' car? A Right here (indicating).

Q Now, make a "K" with "1" alongside of it, there, indicating the place where the Peskowitz' car was at that time? A (Witness indicates as directed).

Q About how many feet are you meaning to indicate as the distance that this Peskowitz' car,

"K1" was, when you were at the position indicated by "K"? A Well, I don't just know how many feet that was, but I know it was not much in the middle of the block.

Q Not quite in the middle of the block? A It was not much in the middle of the block.

Q Well, with you at the position "K" and the Peskowitz' car at the position "K1," what course did you then take? Indicate that with your pencil. A Took a course this way.

Q Well, indicate the place where the two cars came together? A The cars came together about here (indicating).

Q That, we will call it "K2," I guess? A "K2"?

Q K-2. A (Witness indicates as directed).

Q Then, where did you car—what direction did your car continue? A When I turned left, I continued over this way (illustrating).

Q As you were going along the course between "K" and "K2," where did you next observe the Peskowitz car between "K1" and the place where you say the accident happened? A Right about here. "K3"?

Q Yes, K3? A (Witness indicates as directed).

Q When you had been going from K to K2 where had you been looking? A Where had I been looking?

Q Yes? A Right in front.

Q Now, when you observed the Peskowitz' car continue toward you at the position which you have marked with K3, how about its speed? A Well, I didn't notice the speed until —

Q Better go up on the stand there. A (Witness resumes stand).

Q (Repeated by stenographer as follows): Now, when you observed the Peskowitz' car continue toward you at the position which you have marked with K3, how about its speed? A Well, the speed, I don't know; you cannot judge the speed of a car coming toward you, while you are riding yourself, you cannot judge the speed of a car.

Q How long was it after the Peskowitz' car was at K2 and the time when it hit you? A How long after?

Q Yes? A What do you mean?

Q Just what I said. How long after you saw it at K3 was it before it hit you? A Just a few seconds.

Q What part of your car did it hit? A On the side.

Q Well, whereabouts on the side? A Right in back of the cab.

Q What part of the car was it, if you can tell us, that ran into your car? A The left front.

Q Then what happened? A That car turned around, hit me in the back.

Q What was the result of the impact against the side of your car, with respect to the body? A It was bent in, iron bars was bent in.

Q I show you a photograph— A It was bent in like that, iron bar on each side.

The Court. Don't whisper, please.

Mr. Chance. Let's mark this for a minute, for identification.

(Marked D-2, for Identification)

Q Showing you D-2 for identification, is that a picture showing the condition of the body of your truck as it was damaged by this accident? A Yes, sir; right there, that is the condition.

Q That then shows the condition of the body as a result of this accident? A Yes, sir.

Jacobus Kuiper, direct

Mr. Chance. I will ask that that be marked in evidence, Your Honor.

Mr. Dunn. I object to it, Your Honor please. From the picture it appears that some repairs have been made,—body taken off the original truck—it is not in its original condition. Counsel knows that.

Mr. Chance. I know that that is the same body, in the same condition, as it was after the accident, as my knowledge goes.

The Court. Let me see it, will you?

Q Hand that to the court. A (Handing D-2 for identification to court).

Q Were you present when this was taken? A I was.

Q How is this different, as it is depicted here, from the condition immediately after the accident? A Well, that body is on a different chassis; while they were repairing the chassis, they took that body off.

Q Is this the body of the car that was in the accident? A That is the body of the car that was in the accident.

Q But not the chassis? A Not the chassis.

Q Was there any change made in the body from the date of the accident until this picture was taken? A No change at all.

Q Are you sure of that? A I am quite sure.

Q Where was this picture taken? A Weinstein's garage.

Q How long after the accident? A That I just couldn't remember, a few days or the following day; I am not quite sure about it, just how long.

Q You were not present when it was taken? A Yes, I was.

Q You were? A Yes, sir.

The Court. I will admit it.

Mr. Dunn. Your Honor please, I would like to amplify my objection before it is admitted, on the ground that it has not been properly connected up; on the ground further that it is apparent from this picture that the body had been removed, not in the presence of this man, from its original position, on the original chassis; and he has admitted that the--he says, he thinks it is about the same, but he does not know what happened to it in the meantime.

The Court. No, in answer to my question, he said it was in the same condition as the time of the accident.

Mr. Dunn. I would like to ask the witness a question on that line.

The Court. You may.

By Mr. Dunn.

Q Were you present when the body was transferred to the other chassis? A I was not.

Mr. Chance. I object to that as immaterial.
The Court. Oh, I will allow that.
Mr. Chance. All right.

Q Do you know what was done in transferring it to the other chassis, or how it was transferred? A I do not.

Q So far as you know, it could have been transferred in any manner; isn't that correct? A I do not know.

Q It might have been dropped on the floor in the course of transferring it from one chassis to another; isn't that so? A That was done, I noticed that, at the time of the accident, that bend in there.

Q You are speaking about a particular mark on the body. I am talking about the body in general. You cannot tell us that that body, as it appears in that photograph, is the same as it was after the accident, can you? A I can.

Q You think it is? A It is.

Q May I see it? Where is the bend you are talking about? A This here is knocked in.

Mr. Chance. I object to cross examination on a paper that is not in evidence.

The Court. I suppose he is asking him now with respect to his—not cross-examination but with respect to the witness's statement that he identifies it as having been in the same condition, because that would be the theory on which it would be admissible.

Mr. Dunn. Exactly.

Q Did I understand you to say that there was a bend in the body? A Knocked in, knocked in.

Q A moment ago you said "bend", that was your own word, not mine. "Bend", you said, didn't you? A Bent in.

Q Do I now understand you to say that this body is bent in?

Mr. Chance. I object to this, because it is obvious that he cannot tell what counsel understands.

The Court. He said it was bent in.

Q You did say a moment ago it is bent in? A It is bent in.

Q Where is it bent in? A This here is bent in; this is an iron rod, this is bent in; there is a space in between that, it should be closed; it is bent in.

The Court. I will allow it.

Mr. Dunn. Your Honor allows us an exception.

The Court. You may have an exception. It is not introduced for the purpose of showing the chassis and the wheels underneath. It is only offered in evidence as an illustration of the condition of the body, which this witness says is the same as just after the accident, and pointing to a specific point on the body which he says was damaged in that collision.

(Marked D-2 in Evidence)

By Mr. Chance.

Q Describe on this the location of the place that you indicate as where it was hit? Beside what letter of the— A Right here on "E".

Q In the word—? A "C", rather.

Q In the "C", indicating the "C" in the word "Lawrence"? A Yes, sir.

By the Court.

Q How does the chassis that is in there now in the picture differ from the chassis that was under the body at the time of the accident? A I don't know what kind of chassis it is that is there now.

Q Is the height from the ground the same in the photograph as was in the truck before the accident? A No, it is higher.

Q Well, it is higher because it is not resting solidly on the chassis; that is the only difference, is it, in the height, which is three or four inches? A Yes, sir.

Q How far from the ground would you say the bend in the side of the truck, where you say it was struck, is in feet? A In feet? Well, I just happen to be as high as the truck.

Q Well, imagine yourself standing up alongside of the truck—you drove the truck? A Yes, sir.

Jacobus Kuiper, direct

Q Imagine yourself standing up alongside of the truck. How far up on your body would the bend on the side of the truck which you say was struck by the other car? A I would say, between five or six feet.

Q Five or six feet; all right.

By Mr. Chance.

Q Suppose you put a "K" here right beside the place which you say was broken by this accident. A (Witness indicates as directed).

Mr. Chance. Makes a "K" on Exhibit D-2.

By the Court.

Q Do you know what it was that struck your truck at that point? A No, it was their car, what part I couldn't say.

Q Well, was it the first blow or the second? A It was the second blow.

Q All right. You said the second blow was received by some part of her car, didn't you? A When she swung around, that was the second blow.

Q You said in your testimony a while ago that she struck you first by running into the front of the car. A Front left.

Q Front left; then the second blow was delivered by some other part of her car, coming in contact with yours? A Yes, sir.

Q Your side? A Yes, sir.

Q What part did you say that was? A I would say that was the left rear.

Q Left rear of her car? A Yes, sir.

The Court. All right.

A (Continuing) That point on the left rear.

By Mr. Chance.

Q Now, what did the force of that contact do to the chassis of your truck?

Mr. Dunn. I object to that on the ground that I do not think the witness is qualified.

The Court. Oh, I think he probably is, if he knows, if he say it. I will allow it, subject to being stricken out if it develops that it is not within his own knowledge. You may answer.

A It knocked the chassis right in, bent the chassis.

Q Whereabouts on the chassis was the bending in? A On the side, pushed the side right in.

Q What part of your side, with respect to the front and the back? A Well, the front, I would call it.

The Court. No, the question is; where on the side. A Right back of the cab.

The Court. Right in the back of the cab. Is that at the same point where you marked the letter "K" on that first photograph?

The Witness. No, sir; I do not think so.

The Court. Not there; all right.

The Witness. It was the front more.

The Court. Toward the front more.

Q I didn't catch whether you told how far from the back.

Mr. Dunn. Just a moment, I don't know what you intend to show there, but I prefer you don't show this witness—

The Court. The testimony is that the chassis was bent just back of the cab.

Mr. Chance. Yes.

The Court. But not at the same point; he thinks a little forward of the point where he indicated the body was bent, or bent in, I think he said, on the photograph, D-2.

Q How about your back wheel? What did it do to that?

Mr. Dunn. I object to that as being leading.

The Court. Well, what happened to the back wheel? A Well, if I am not mistaken, that was broke.

Q At what speed would you say your car was proceeding as you were making that turn? A About eight or ten miles an hour around that corner.

Q After the accident, did you notice the front of the Peskowitz' car? A Why, yes.

Q Were there any marks on the front of that? A I know the bumper was broke.

Q Did you make a statement to the police officer, such as you have heard narrated here, which as nearly as I can recall is to the effect, that you thought that the Peskowitz car was far enough away so that you were taking the chances of getting into Seventeenth avenue, but that you thought he must have been coming too fast, that you were unable to make it? A I don't remember any statement made at the time of the accident.

Q You do not remember whether you made any statement, or not? A I am quite sure I did not.

Q I will show you another photograph here—

The Court. While we are on that subject, let me ask you: Did you say to anyone when asked why you cut us off, I can take a chance, if I want to?

The Witness. I didn't say anything like that.

The Court. Or words to that effect: I can beat it, or words to that effect?

The Witness. I did not.

The Court. All right.

Q I show you another photograph and ask you if that accurately portrays the scene of this accident?

Mr. Dunn. No objection to that photograph.

Mr. Chance. All right, if there is no objection to that one, we won't even bother to ask you. Mark this in evidence.

(Marked Defendant's Exhibit D-3)

Q On this D-3 in evidence, suppose you step over here before the jury box so as to explain what these different streets are. Where is Vreeland avenue on that picture? A Right here, with the car tracks.

Q Now, run the eraser end of your pencil over the part which is Vreeland avenue, on this picture. A (Witness indicates as directed).

Q Indicating the part of the picture which has a car track. A Yes.

Q Yes. A That is the car track.

Q Now, what is the street which is right at the bottom of the picture in the foreground here? A That is 34th street, that runs right over there.

Q Continues all of the way across, 34th street, is it not? A Right up there.

Q What is the street here to the left of the picture, the first street above the one that comes down? A Seventeen avenue.

Q To Vreeland avenue? A Seventeenth avenue.

Q Continuing on the right hand side of the picture as you face it— A Yes, sir.

Q That is Seventeen avenue, also? A Yes, sir.

Q Can you indicate on that with "K" the place where the two cars came together as nearly as you can tell us? A Right over here.

The Court. A little louder.

A (Continuing) Right over here (indicating).

Q It is hard to get. A (Indicating).

Q Put your "K" there. A (Indicating; witness resumes stand).

Q Now, did you see the picture of the chassis taken after it was repaired? A It was.

Q Were you present when that was taken? A I was.

Q I show you a photograph, and ask you if that is a picture of the chassis taken after it was repaired? A That is the picture.

Mr. Chance. All right, mark this.

(Marked D-4 for Identification)

Q I show you another picture of the chassis, and ask you if that is a picture of the chassis of your car? A That is.

Q At what time was that taken? A That was taken same time as that one was taken.

Q After it had been repaired?

The Court. Won't you keep your voice up, please. I cannot hear you. I don't know if the jury can or not. You see, you are not talking to counsel; you are talking to that last man over there.

A After it was repaired that is the picture.

Mr. Chance. You may mark this one also.

Mr. Dunn. For identification only.

Mr. Chance. That is all; I am going to make them in evidence later.

(Marked D-5 for identification)

Q How do you know that they are of the chassis that was on your truck? A I remember the place the chassis was in, the spot that the chassis was in.

Q Who was present when these were taken? A Why, the photographer's helper and the photo-

grapher himself, naturally, and myself. I just forget whether there was anyone else, or not.

Q But you are sure that they are of your car after the repairs had been made? A I am.

Mr. Chance. Now, I would like to offer them in evidence. First, this one, D-3 for identification.

Mr. Dunn. I object to that, first, on the ground that it does not even appear that this witness ever saw the chassis before the accident. Secondly, it does not appear that they represent the condition immediately after the accident, but they purport to represent some conditions after repairs of a certain nature are made to this car, and this witness does not see the photographs, or the chassis, until after these repairs are made.

The Court. What is the evidential value of them? to show where the repairs were made?

Mr. Chance. To show where they were made and the extent of the damage done by the force of the contact.

The Court. But suppose that the repairs that the photograph now shows are repairs that were made but were not necessary to have been made? Are you going to connect that up by the man who made the repairs?

Mr. Chance. I have in mind to call the man who made the repairs to tell what repairs were necessary, and he spoke particularly with respect to the ones shown by these photographs. I will offer him later.

The Court. Suppose you offer them at that time and see what he says?

Mr. Chance. All right.

Q Now, at the time this accident happened, was there anything in Seventeenth avenue to interfere

with this Peskowitz' car turning into there instead of running into you? A Nothing at all.

Q Was there anything to interfere with the Peskowitz' car turning to its left into Seventeenth avenue, on the easterly side, instead of running into you? A I know that there was a car in back of me, that is all.

Q On the easterly side of Vreeland avenue, the last time that you looked in the direction of Seventeenth avenue, was there any car or obstruction of any kind which would have interfered with the Peskowitz' car continuing into that side of Seventeenth avenue? A There was nothing at all.

By the Court.

Q How do you know there was a car behind you? A I noticed that before I turned; I noticed that there was a car behind me.

Q Well, how could you see it? A I have a mirror.

Q Did you see it reflected in the mirror? A I saw it through the mirror, and then on an angle, I noticed that there was a car, I turned around—

Q Turned around? A —not out of the side of the cab, I have a window in the back, and I just had to make a half turn, and I could see it.

Q How soon before you turned was that? A How soon?

Q How far from the point where you turned were you when you turned your head and looked out of the back? A I imagine about ten or fifteen feet before I turned.

Q Where were you looking when you turned? A When I turned I was looking before me.

Q When you turned, you looked ahead—you were looking ahead? A I was looking the way I was turning.

Q At that time when you first turned the car was up near the letter "E" on "avenue"? A It was.

Q How far is that from the point of collision? A Well, I don't know just how large that block is, but it wasn't quite in the center of the block.

Q What is the ordinary block, in size? A Well, I haven't the least idea what an ordinary block is.

Q You cannot tell us how far it was away? A I say, it was not quite in the center of the block.

Q How far were you at that time from the point where the collision occurred? How many feet? A Well, I was on the beginning of the cross-walk.

Q Yes; how many feet did you travel from the point where you first started to turn and then saw the approaching car up at the end of the letter "E" on "Avenue" on the map? A I guess—

Q (Continuing). Until the collision occurred? How many feet did you travel? A Between thirty and fifty feet.

Q Between thirty and fifty feet; how much more than that did the other car travel in that same space of time? A Well, I just don't know how much more, but it was quite a distance more.

Q Four times as much? A Well, I wouldn't swear to that.

Q Three times as much? A It was about four times as much—about three or four times as much.

Q So that if you traveled thirty feet, the other car traveled 120 feet? A Well, it was about three or four times that much.

Q And if you were going—what did you say—eight miles an hour as you were making the turn— A Going between eight and ten miles an hour.

Q If you were going ten miles the other car was going either thirty or forty miles? A I would say that; yes, sir.

Q In order to have met you at the place where you say? A I would say that; yes, sir.

The Court. All right.

Mr. Chance. I think that is all.

Cross examination by Mr. Dunn.

Q Have you been testifying about the accident that occurred on August 2, 1926? A I have been testifying about the accident that happened between Mr. Kramer's truck and this Peskowitz' car.

Q I mean, you are not confusing it with some other accident, are you? A I am not.

Mr. Chance. Not confusing it with that one in the other case of Mr. Peskowitz.

Mr. Dunn. Now, you sit down, Mr. Chance.

Q Now, I think you said that the first time you saw the Peskowitz' car, it was at the point you have indicated as K-3 on the map; is that right? A If it is K-3, yes.

Q Down by the letter "E," last letter in the word "avenue"?

The Court. K-1.

Mr. Dunn. K—

Mr. Chance. You were right before; last time he saw it was K-3, first time was K-1.

Mr. Dunn. I am trying to get along without your help, Mr. Chance.

The Court. He was correcting the court, not you, Mr. Dunn.

Q Well, when you first saw the Peskowitz' car, where was your car, when you first saw it? A When I first saw that, I was about on the cross-

walk, just by the cross-walk, to the beginning of the cross-walk.

Q Do you think you can find that point on the map? or, have you already located that point on the map? A I have already located that point on the map.

Q Is that the point that you indicated by K? A It is.

Q At that time the Peskowitz car was at the point you have indicated by K-1? A It is.

Q From the point that you have indicated by K, you immediately started across the street, did you not? A I did.

Q And turned into Seventeenth avenue? A I did.

Q Well, you hadn't looked back before that time, had you? A I did.

Q Did you see anything before you looked back? A I seen a car back of me.

Q You remember Mr. Chance asked before the accident what other cars were on the street. You said—how many did you say? A I noticed a car back of me.

Q Did you tell him that the first time he asked you? A I did.

Q Didn't you tell him that you saw the Peskowitz' car and no other car on the side? A The Peskowitz' car was in front of me, but this other car was in back of me.

Q You are sure that there was another car in back of you? A I am.

Q It was a Chevrolet sedan, wasn't it? A I wouldn't swear what kind of a car it was, but I know it was a car.

Q Going in the same direction that you were? A In the same direction.

Q How far in the rear of your car? A I didn't notice.

Q Where were you when you first observed the Chevrolet car? A Before I got to the cross-walk.

Q How far before you got to the cross-walk? A About ten or fifteen feet before I got there.

Q That would be ten or fifteen feet in the rear of K-1? A In the rear of K-1.

Q When you first observed it, you observed it in the mirror, didn't you? A I did.

Q Where was the Chevrolet sedan when you first observed it? A In the back of me.

Q How far? A You cannot judge the distance in a mirror.

Q Well, was it—can you judge within a hundred feet? A It wasn't no hundred feet, no.

Q It was about twenty-five or thirty feet back of you, wasn't it? A That I won't swear; I know that there was a car back of me.

Q You know it was only twenty-five or thirty feet back of you, don't you? A I don't know how far it was in back of me.

Q It may have been only twenty-five or thirty feet, isn't that so? A It may have been; it may have been more or less.

Q Well, you looked back after you first observed it in the mirror, didn't you? A I did.

Q Where was your car when you looked back? A Where was my car?

Q Yes? A On the right hand side of the road.

Q Had you started to turn then? A No, not right then.

Q Let's see; you first observed the car in the mirror when you were ten or fifteen feet away from K; is that right? A Ten or fifteen, yes.

Q When did you next observe the car in the rear? A I looked back as soon as I saw the mirror, I looked back.

Q You looked out of the cab? A I didn't put my head out of the cab; I made a half-way turn in the back, looked through the broken window.

Q You made a half-way turn of your body? A No, just the head.

Q Just your head? A Just my head.

Q How far had you gone by the time you did that? A What do you mean?

Q Had you reached K yet? A I don't think I did.

Q Well, it was between that ten feet that you saw it in the mirror and then you looked out of the cab to see it, did you? A Through the window, through the back window.

Q When you looked out of the back window, how far was the Chevrolet sedan in the rear of your truck? A That, I cannot tell how far it was; I didn't take no special notice.

Q Well, you can rely on your eyes, can't you? You said you couldn't tell the distance by the mirror. When you looked back, you could tell, couldn't you? A Yes, you could tell, but I didn't take no special notice how far back; I just glimpsed at the car, I don't think—frontwards you can.

Q You were going to make a turn in front of that car, that is right? A Yes, but it was in back of me.

Q Do you mean to tell this court and jury you did not pay any attention to the car in your rear, how far you were in front of that?

Mr. Chance. I object to that; he did not tell the jury any such thing.

Q Do you mean to say now that although you were going to make a turn to your left, in front

of that car that was in your rear, that you did not ascertain how far that car was in your rear, before you turned? A That car was far enough in back of me to pass on the right hand side of me after I made the turn.

Q How far was that car in back of you when you started to turn? A As I told you before, I haven't the slightest idea, I don't know how far back it was.

Q You had no difficulty in telling us how far the Peskowitz' car was away when you reached K? A Because I was looking frontwards where I was looking.

Q Can't you see as well backwards as you can forward? A I can, if I look long enough, yes.

Q How long did you look backwards Mr. Kuipers? A I just glimpsed back.

Q But that glimpse was long enough to tell you that you could go to the front of the car in your rear, was it? A It was.

Q Then, did you go on across the street? A I had the turn made there.

Q You took this course, did you? A I did.

Q Now, when after you left K, did you next see the Chevrolet sedan? A After I left K, I didn't notice it no more; I didn't look back.

Q You never looked back after you left K? A No, after I started to make the turn, I didn't look.

Q You were going eight to ten miles an hour? A Yes.

Q The Chevrolet sedan didn't hit your truck, did it? A It didn't.

Q The Chevrolet sedan was in motion, was it? A It was.

Q Then, you proceeded on across the street, and you entered what would be the projection of Seven-

teenth avenue? You understand what I mean? A (No audible response).

Q You entered this section here, across what would be the continuation of the curb line of Seventeenth avenue? You entered here, did you not? A I did.

Q And continued across? A I did.

Q But you didn't see Mr. Peskowitz' car until it reached the point that you have indicated as K-3? A That was the second time I saw—

Q I beg pardon? A That was the second time I saw it after I saw it further up the road.

Q First time was at K-1? A Yes.

Q Next time you saw it at K-3? A Right.

Q Where were you? A I have a mark made on there where I have been.

Q Just come down again; I do not see the mark. Just come down and mark another mark, whether it was there or not, where you were when you next saw the Peskowitz' car at K-3, where were you? A Right here.

Q Just indicate that by K-4? A (Witness indicates as directed).

Q Circle around K-4; just go back on the stand. A (Witness resumes stand).

Q Did you not tell Mr. Chance that from the time you left the position K, you continually looked forward until this accident occured? A While I was turning, yes.

Q But you didn't see the Peskowitz' car from the time it left K until it arrived at K-3? A I didn't, I didn't notice it.

Q Although all of that time that you were going from K, you were looking forward? A Looking the way I was turning.

Q Well, you were turning in this direction, weren't you, as you have indicated here? A I was.

Q Your sight is all right, is it? You can see? You can see? A Yes, I can see.

Q When you got to that point that you have indicated by K-4, there was a collision? A There was.

Q I think you said that Mr. Peskowitz' car ran into the side of your car? A I did.

Q Now, are you sure about that? A I am sure.

Q That was the first blow? A That was the first one.

Q What part of Mr. Peskowitz' car struck your car? A It was the left side.

Q Left side of Mr. Peskowitz'? A Towards the rear; towards the rear, that was the second blow.

Q No, the first blow? A First blow?

Q Let's talk about the first one? A First blow?

Q What part of Mr. Peskowitz' car came in contact with your car at the first blow? A The front left—

Q Of Mr. Peskowitz' car? A —of Mr. Peskowitz' car.

Q With what part of your car did that come in contact? A Right in back of the cab.

Q Now, after that first blow, what other part of Mr. Peskowitz' car came in contact with your car? A The left side, towards the rear.

Q Going back again for a moment to the first blow, what portion did you say of Mr. Peskowitz' car struck your car? A Right in back of the cab.

Q What portion of Mr. Peskowitz' car was it that struck your car? A Front left.

Q What part of the front left? A Why, the mudguard and the wheel at the corner, front left.

Q Mr. Peskowitz' left front of the car, left front wheel; is that right? A Yes.

Q What part of Mr. Peskowitz' car delivered the second blow to your truck? A On the left side, towards the rear.

Q After these two blows, the cars were together, were they not? The right side of your truck and the left side of Mr. Peskowitz' car, they were together, were they not? A They were together at that time, just at the blow, yes.

Q Yes. Then where did your car go? A My truck continued up for a few feet before it stopped.

Q Did you run into anything? A I did not.

Q Did the front of your car come in contact with any object? A It did not.

Q Had you been in any other accident that day? A I had not.

Q The front of your radiator was in good shape, was it? A It was.

Q Both of your front fenders were in good shape, were they? A I am sure they were.

Q Your front bumper was in good shape? A It was.

Q Not damaged in this accident? A It was not damaged in this accident.

Q You are sure about that, are you? A Perfectly sure.

Q They were in good shape? A They were.

Q Who repaired your truck after the accident, Mr. Weinstein? A Weinstein's garage.

Q He is in court, isn't he? A He is.

Q Did you see the bill rendered in this case? A I did not; I have no interest in the bill.

Q Do you know whether he charged for a bumper? A I have no idea what he charged for.

Q Front fender? A I have no idea what he charged for.

Q Do you know? A I have no idea what he charged for.

Q You are sure those parts were not injured in this accident, aren't you? A I am sure they were not.

Q Well, after Mr. Peskowitz' car ran into your car did it push your truck? A Did it push my truck?

Q Yes? A It pushed the front, yes—side and the front.

Q I say it pushed your truck, didn't it? A Pushed the truck, yes.

Q Pushed it up the street? A Pushed it a little ways, yes.

Q How far? How far? A Well, the way the chassis was bent—

Q Well, how far did it push your truck, what distance, two feet, three feet, five feet, ten feet? A Why, I would say, about eight or twelve inches, that is the way he pushed it.

Q Right sideways? A It wasn't the whole truck, no, the whole truck didn't move.

Q What did move? A Just the side, rear didn't move—it might have moved a foot, but I didn't notice it.

Q Did the wheels move? A Wheels move? Might have moved, yes.

Q You were only going eight or ten miles an hour? A I was.

Q You put on your brake? A I did.

Q Brakes in good shape? A They were in pretty good shape.

Q In what distance, can you stop, going eight or ten miles an hour? How quick? A Very short distance, I can stop.

Q In what distance can you stop your truck after you apply your brakes in the condition that they were on August 2, 1926? A Well, it is all according to how quick you want to stop.

Q How quick could you stop your car on the morning of August 2, 1926? A You could stop in eight or ten feet.

Q Going eight or ten miles an hour? A You can.

Q You could stop in a good deal less than that, couldn't you? A You might, depending on the kind of brakes you have.

Q Did you apply your brakes? A I did.

Q Did your car stop? A It did.

Q Where? A Little past the accident.

Q Well, how far past the accident? A I should say about fifteen feet, something like that, or a little more; it could be less.

Q Up against the curb, wasn't it? A It wasn't up against the curb, no.

Q Well, how far after the accident did you go? You said ten or fifteen feet, didn't you? A It could be more and it could be a little less even, or it could be more.

Q Just come down from the stand for a moment, will you? A (At Exhibit P-6).

Q You told Mr. Chance, did you not, that this is where the accident took place? A I did.

Q Where did you stop your car? Just indicate. A About here, I said (indicating).

Q Will you just mark K-5 there? A (Witness indicates as directed).

By the Court.

Q Is that point that you have marked K-5 the front of your car? A Well, I wouldn't say whether that was the front or center or the rear, but that is just about the spot where I stopped.

Q What did you do after you stopped your car there? A I went out.

Q When did you next move it? A When I next moved it, when I saw that the lady was taken to the hospital.

Q Was that before or after the officers came? A They saw the car in the exact position when I stopped before I moved it.

The Court. All right.

By Mr. Dunn.

Q Go back on the stand. A (Witness resumes stand).

Q They also went over the marks on the road with you, didn't they? A They didn't, with me, no.

Q You saw the officers here this morning, didn't you? A I did.

Q Sgt. Albers and Sgt. Graves? A I did.

Q Did they talk to you? A One was writing a summons out for me, that is as far as I got, I didn't wait until he got it all.

Q Didn't they ask you anything about the accident? A They might have, but I don't remember them.

Q You might have forgotten what they said? A I don't remember them asking, they might have.

Q You might have forgotten what you said to them? A No, I didn't forget what I said to them.

Q Don't you know, Mr. Kuipers, you went out in the street with Sgt. Albers and Sgt. Graves, and one was writing down and the other was going along with you, out in the street? A They didn't go along with me out in the street.

Q Did you see any marks out in the street? A I did, of their car.

Q Where was Mr. Peskowitz' car after the accident? A After the accident, the Peskowitz' car was right in the road, pointing up Seventeenth avenue.

Q Just come down from the stand for a moment, will you? A (At Exhibit 1-6).

Q Indicate on the map where the Peskowitz' car was after the accident. A After the accident the Peskowitz' car was right about here, pointing up Seventeenth avenue.

Q Right on top of the mark that you have indicated by K-4; is that correct? A About here, yes.

Q About there? A Pointing up Seventeenth avenue.

Q Right at the point where the accident took place; is that correct? A This here is where they were; they did turn around—

Q After the accident the Peskowitz' car remained at the point where the accident took place? Yes or no. A It did.

Q All right; go back on the stand. A (Witness resumes stand).

Q The front of the Peskowitz' car was turned from the southerly direction to the westerly direction; is that correct? A It was.

Q But the rear of the car was the place on which the Peskowitz' car pivoted, wasn't it? A I don't know what you mean.

Q Do you understand what pivoted means? A Standing still? Is that what you mean?

Q The front of your car went around and the rear of your car stood still? A The rear of the car didn't stand still; that was what swung around.

Q Well, the front of the car was up against your car, wasn't it? A It was.

Q According to your version? A It was when it hit.

Jacobus Kuiper, cross

Q Your car moved on, didn't it? A It did, but it didn't swing around.

Q Didn't the front of the Peskowitz' car move when your car moved? A It might have moved, yes, when she swung around.

By the Court.

Q You went in the front of the Peskowitz' car, not in the rear? A I don't know what you mean.

Q Well, you passed the Peskowitz' car after the accident, didn't you, after the contact? A I did.

Q What part of the car did you pass, the front or the rear? A It was the side; she was pointing up Seventeenth avenue, that is the way I turned.

Q You didn't go around the rear of her car anyway, did you? A No, sir; I did not.

The Court. All right.

By Mr. Dunn.

Q I show you Exhibits P-12, P-13 and P-14; do they represent the condition of the Peskowitz car after the accident? A I didn't notice the car after the accident; I was looking for the women to see how they were, whether there was anyone hurt.

Q What did you do for the women? A Why, I looked to see if there was anyone hurt.

Q When? A After the accident.

Q Did you help anybody out of the car? A I did not, because there was someone ahead of me.

Q Did you help anybody in the ambulance, or anything else? A I did not, because there was someone ahead of me.

Q What did you do for the women that were in that accident?

Mr. Chance. I object to that on the ground that it is immaterial.

The Court. I will allow it.
Mr. Chance. Exception.

Q What did you do for the women that were hurt in that accident? A I couldn't do anything, because they were ahead of me, other people were ahead of me.

Q Well, after the women were removed, did you see the Peskowitz' car? A I looked at my own truck.

Q Did you look at the Peskowitz' car? A Just a glimpse, that was all.

Q Well, did you see anything like that? A I am sure that I noticed something like that.

Q The right side of the Peskowitz' car was intact, wasn't it? A Right side didn't touch my car.

Q It was the left side of the Peskowitz' car that ran into your car, was it? A It was the left side.

Q That is, the front of the Peskowitz' car that appears on that picture, isn't it? A portion of the front of Peskowitz' car? A It does.

Mr. Chance. Referring to what?
Mr. Dunn. Exhibit P-14.

Q That is the portion that ran into your truck, is it? A This portion.

Q And pushed it ten inches sideways? A It could be more; it could be less. That is what I said.

Q You can see on this picture the left front of the Peskowitz' car that you say pushed your car twelve inches, can't you? A I see that.

Q You still think the Peskowitz' car pushed your car twelve inches, do you? A Between eight and twelve, yes.

Q Do you know how the glass was broken on the left side of Peskowitz' car? A Striking the

side of the truck, the only way it could have been broken, striking the side of the truck.

Q You didn't pay much attention to the Peskowitz' car, did you? A I did—

Mr. Chance. I object. What time?

Q After the accident? A I didn't pay much attention to it.

Q But you are satisfied the—what was the condition of the front of the Peskowitz' car? A As I told you before, I only had a glimpse at it, that was all.

Q Didn't you tell Mr. Chance it was all smashed in? A I said, the mudguard and the bumper.

Q And the radiator, didn't you? A I don't remember saying anything about the radiator.

Q Didn't you tell him it was all smashed in? A I don't remember saying that.

Q Looked something like that, didn't it?

Mr. Chance. How about the other picture?

Q It isn't smashed in, is it? A The mudguard is, I can't see the bumper.

Mr. Dunn. I think that is all.

REUBEN PESKOWITZ, recalled for Defendants.

Direct Examination by Mr. Chance:

Q Mr. Peskowitz, these three pictures aren't the only photographs showing the condition of your car that you have, are they?

Mr. Dunn. I object to that, your Honor, irrelevant and immaterial.

The Court. I will allow it.

A Only three pictures we have.

Q Did you not have pictures showing the condition of the bumper *on* the front of your car? A Never did.

Mr. Chance. That is all.

IRVING L. WERKSMAN, sworn.

Direct Examination by Mr. Chance:

Q Mr. Werksman, have you any other pictures besides these? A I can give you my entire file—

Q No, I don't want your file; I want the pictures you showed me yesterday. A I will show you all of the papers I have.

Q I don't want papers; I want pictures. A If there is anything in this file, you are welcome to it.

Q Did you leave some pictures home between now and yesterday? A I did not.

Q Didn't you yesterday, when we were upstairs, in the other court room, have other pictures, and you and Mr. Dunn have some discussion with me, as to the admissibility of pictures, and other pictures than those were shown in the presence of Mr. Kramer and Mr. Halligan?

Mr. Chance. Stand up.

A Here is another picture here that I have, picture of your truck.

Q Well, this is not the—

Mr. Dunn. I object to this, if Your Honor please. I cannot see the materiality of it.

A You can have that; that is your picture.

Q I am not asking about my picture; I am asking if you and Mr. Dunn did not exhibit to me yesterday in the presence of Mr. Kramer and Mr. Halligan—

Mr. Dunn. I do not recall any such exhibition.

Mr. Chance. I will ask the witness anyway.

The Witness. I will answer him, Mr. Dunn; I will answer the question.

Q All right. A Yesterday afternoon upstairs—

The Court. You haven't heard the question yet.

Q Yesterday afternoon upstairs, didn't you, Mr. Dunn,—or you, in the presence of Mr. Dunn, exhibit to me certain photographs, in the presence of Mr. Kramer and Mr. Halligan, which showed the condition of the bumper and the left front mudguard on that Peskowitz' car? A What happened was this—

Q Did you or did you not? A Wait a minute. I can't answer yes or no to the question, if Your Honor please, but I will be very glad to answer that question.

Mr. Chance. Just repeat the question.

Q Let's see if you can. A If you want to be fair about it, I will be fair with you.

Q I know you want to be fair. Just produce the picture with the bent bumper. A Are you implying that I am keeping something from the jury?

The Court. No, but the question can be answered yes or no, can it not?

The Witness. No, it cannot.

The Court. Why?

The Witness. Because of the explanation it needs.

The Court. The question is: Did you show him a picture yesterday that showed the bumper and the front part of the Peskowitz' car?

The Witness. No.

The Court. So that it can be answered "yes or no" can't it.

The Witness. But that requires some qualifications. The answer, "No", is not the entire truth, because I did have pictures in my hand, and when I examined those pictures, Mr. Chance said to me, "Will you admit these pictures in evidence?" I said, "If you will admit mine, we will admit yours." We agreed then, without producing the photographer, that these pictures would go into the jury—I mean, would go into evidence; thereupon, Mr. Kramer took the pictures, passed them over to you.

Q Will you deny it, that there were among those pictures that Mr. Kramer had in his hands and passed over, such as you have just told us about, one or two pictures which showed the front bumper and the right and the left front mudguard of the Peskowitz' car, showing both of those things bent? A There is nothing in this case that I have to conceal from you, the court or the jury.

Mr. Chance. I ask that be stricken out as not responsive.

The Court. Strike it out.

A (Continuing) I have no other pictures than what you see here in court.

The Court. The question is: Did you have, yesterday?

The Witness. I had no other pictures; I had my folder yesterday, and these are the pictures I brought to court this morning.

The Court. All right.

Q Let's see which pictures these are. A I have got one more in the file that you may have.

Q I don't want any more of these; I want the pictures showing the condition of the fenders. A I tell you, I have no others.

Q You just told me you had. A No, I did not; I have one more.

The Court. Which is not of your car?

The Witness. No.

The Court. He is only talking about the Peskowitz' car.

Q I do not want that; I have one of them myself.

The Court. Anything more?

Q Among those pictures that Mr. Kramer had in his hand from you, there was not that showed the front of the Peskowitz' car? A Not that I remember; those pictures there show part of the front.

Q No, but showing the front view of the car. A No.

Q So that it showed the bumper and the left front mudguard? A I have no others.

Q Did you have? A I said, no, before, didn't I?

Q No, you did not. That is all.

(No cross-examination)

LAWRENCE F. KRAMER, sworn.

Direct Examination by Mr. Chance:

Q Mr. Kramer, I believe you are connected with the company that is one of the defendants in this case. A Yes, sir.

Q In fact, that company is named after you, isn't it? A Yes, sir.

Q Speak up good and loud so that the last juror can hear. I show you three pictures, P-12, P-13 and P-14, and ask you if they were among the photographs that Mr. Werksman and Mr. Dunn showed us yesterday afternoon? A They were.

Q Were there other photographs of that, purporting to be of that same car, shown to you by Mr.—or shown to us by Mr. Werksman and Mr. Dunn yesterday afternoon? A There was one in particular.

Q Well, what did this one in particular—what was that a view of? A It was a view of the front of the car—Peskowitz' car.

Q Did that front view of the Peskowitz' car include the front bumper and left front mudguard? A It showed the left front mudguard was also dented in or pushed back, but I am positive about the bumper hanging.

Mr. Chance. Mr. Halligan; will you stand up?

Q Mr. Halligan, who is standing up in the back there, was at the table with us at the time, was he? A He was.

Q Now, shortly after the accident, you went to the scene of it, didn't you? A I did.

Q When you got there, did you notice the condition in which your truck was? A I did.

Q By "your", I mean the "Lawrence F. Kramer Company" truck. A (No audible response).

Q Will you describe to the court and jury the damaged condition of your truck as you got there shortly after the accident on the day the accident happened? A I would say that the— in fact, I know that the side of the body was pushed in as the picture indicates; I also know that the front of the chassis and the front of the truck was over at least six inches further than the rear; in other words, the front of it was pushed at least six inches out of line.

Q I show you a picture which has been marked in evidence here as D—, and I will ask you if

that is in accordance with your recollection of the condition of this body? A That is.

Q Now, will you tell us the construction of the body part of that truck? A The body itself, is that what you mean?

Q Yes, describe that. A The body itself is made especially for us for heavy work, made by the Sauerbutt Vehicle Company. It was an exceptional truck body; the thinkness of the planking, I cannot say, but however, the top of the planking had a steel binding on; it had steel rods or supports on the inside supporting it, and a sheet metal on the flooring, braces all along the side.

Q What were the braces along the side made of? A Wood with steel reinforcement.

Q Can you tell us in inches the extent to which the side of the body as shown by this Exhibit D-2 that you have indicated is a correct representation, was bent back? How far was the top of the side board of the body bent in at the time you arrived there right after the accident? A I would say, where the little mark is.

Q Little mark on the— A That little mark there (indicating).

Q K, yes, all right? A I would say that that, that was at least four inches back off line, off the place that it should have been.

Q How about the condition of your—what other things were broken about the truck, if anything, besides the body? A I have already mentioned the chassis, and as to the alignment, how it was off, I think it was.

Mr. Dunn. Just a moment. If your Honor please, I want to interpose an objection to this witness testifying to these things, unless it is subsequently connected up.

The Court. He is telling what he saw when he got there after the accident.

Mr. Dunn. But they have not laid the basis of the previous condition of the truck, before the accident.

The Court. Well, they are going to ask him that, I assume. Ask him that now.

Mr. Chance. All right.

Q What was the condition of this truck before the accident? A Well, it—just as to what, as to the running condition of the truck?

The Court. No, as to whether or not these things that you have described were there before the accident.

A The body absolutely was not in any shape such as it is now. It may have been scratched up same as a truck that is doing any heavy work will be, but the body, I would say, was as near to perfect condition as it could have been, except that it had just come out of the shop.

By the Court.

Q Were those defects that you have talked about there when you saw it before the accident? A Absolutely no.

Q When did you see it last before the accident? A Possibly that morning, leaving the yard, at different times.

Q Very well. What other parts of the truck were damaged, if any? A The chassis and the rear end, which we have had trouble with, and having been having trouble with ever since.

Q How about the wheel? A I do not recall.

Q How about the front mudguard? A I cannot say exactly about the front mudguard.

Q How about the front bumper? A I don't believe the front bumper was busted at the time of the accident.

Q Well, was it before the accident? A No, sir.

Q The car was not bent before the accident? A Not to my knowledge.

Q Well, you would have known it, would you not? A Well, that is a very hard question to answer, your Honor. The men are on the streets every day. You are familiar with trucks. You cannot tell from one hour or the other. Very often, if it were the end of the day, ten to one the boys would have reported or one of my men would have reported to me.

Q You do not run your trucks with damaged mudguards and damaged bumpers? A Not as a rule.

Q If they were damaged, it would be called to your attention, as soon as possible, or you would see it yourself? A That is possible.

Q I mean, you are on the job? A Yes, sir.

Q You are there every day? A Yes, sir.

Q You have occasion to look at the trucks? A Yes, sir.

Q You may not examine them and fix them, but you do see them? A I do.

Q As far as you know, there was no damage to the front mudguard or any fender before the accident? A As far as I know, they were absolutely O. K.

Q Nor do you remember whether there was any damage to them after the accident? A I cannot say as to the mudguard or the bumper.

Q Did you have a bill for repairs to the mudguard or the bumper in connection with the body? A I did.

Q (Partly inaudible)? A Well, as to whether it was broken before or during the accident, I cannot say.

Q All right.

By Mr. Chance.

Q How did you get your truck away from the place of this accident? A I ordered the driver to attempt to drive it.

Mr. Dunn. Now, I object to this—question.

By the Court.

Q Well, how did you get it away, is the question? A I was going to get to that.

Q You can get there quicker, if you will answer it directly. Did you tow it, or have it towed in? A We had to; we attempted to drive it and had to tow it.

Q You see, the question was not why; you are trying to tell us why you had it towed? A But I cannot—

Q No, the question is simply, how did you get it back to the yard, and the answer is, you towed it? A We tried to run it, and we had to tow it.

Q You did not run it? A We ran it part of the way.

Q Then your answer is, you ran it part of the way, towed it the rest. See how quick that is? A Yes, sir.

By Mr. Chance.

Q Was it possible to run it away under its own power? A No, its own power, we found it was not possible; we attempted it.

By the Court.

Q Was the other car there when you got there, the Peskowitz' car? A It was.

Q Did you examine it? A I saw a part of it, yes; in fact, I saw the whole car.

Q You looked at it pretty carefully, didn't you? A No, I didn't. That seems rather odd, but I was very much taken up with the ambulance driver and their trying to get the lady out, elderly lady out from behind the trunk and the back seat of their car.

Q Where were you when the accident happened? A At my office.

Q How did you get there before that ambulance was? A I didn't get there before the ambulance was there.

Q But you got there before they were taken away? A (Inaudible).

Q Did they telephone you? A My driver telephoned me.

Q Do you know whether the ambulance was there before you got there? A It was.

Q Were the officers there when you got there? A I wouldn't say whether the officers were there when I got there, but they were there shortly after.

Q Did you, in the course of your examination which you made of the Peskowitz' car, notice anything wrong with the front of it? A I would say, yes.

Q What was the condition of the front? A I would say the front looked pretty well smashed in, if my memory serves me right; I would have said that the radiator,although the picture that we are talking about, did not show that the radiator was busted, but the front mudguard or the front bumper was.

Q What would you say about the radiator? A My thought was that the radiator had been busted off.

Q You mean, pushed in? A Broken; yes, sir.

Q Broken? What about the hood? Was that telescoped, or over, ripped up, torn, or anything of that kind? A Not off the body, but it was damaged.

The Court. All right.

By Mr. Chance.

Q Were you present at the time these pictures, D-5, I guess that is, for identification, and D-4 for identification, were taken? A I was not present when these pictures were taken, but I ordered my driver to go to the garage when they were taken, and I had phoned to the garage people, telling them that the photographer was going to take them.

Q You do not know of your own knowledge whether these are this truck or some other truck? A I do.

Q How do you know? A Because I saw the truck after it had gone into the shop, and I know the chassis. I saw it during the course—I saw it at different times during the course of construction —reconstruction.

Q Well, speaking first with respect to D-4 for identification, does that picture of the chassis accurately represent the condition in which this chassis was as it was repaired? A It positively does.

Q Does the place where the repair was made show on that picture? A It does.

Q Does D-5 for identification accurately portray the condition of this chassis of this truck involved in the accident immediately after the repair was made? A It does.

Mr. Chance. Now, then, I would like to offer these in evidence—D-4, I will start with.

Mr. Dunn. I object, until I have had an opportunity to examine the witness.

By Mr. Dunn.

Q You did not see the chassis before the accident, did you? A Before the accident?

Q Yes, the chassis? A The chassis?

Q Yes? A I saw the whole truck, that includes the chassis.

Q You did not examine or see the chassis before the accident, did you? A I saw the whole truck, that included the chassis, a few times a day, but I have seen the truck.

By the Court.

Q He means, did you see the broken part of the chassis before it was repaired? A Before it was repaired?

Q Yes? A After the accident, or before the accident?

Q After the accident, when it was in a broken condition? A I did.

The Court. All right.

By Mr. Dunn.

Q Did you see the chassis before the accident, the chassis? A Before the accident?

Q Yes? A You can see the chassis to some extent, but the body covers the chassis; you cannot see the chassis as it is there without getting underneath.

Q You never examined the chassis before the accident, did you? A No more than I examined the whole truck.

Q For all you know, the chassis might have been crooked to some extent before the accident? A No, it could not be. The chassis was at least six inches, I would say, without measurement, at least six inches out of line after the accident; the truck was running that morning, and the truck couldn't run under the condition that it was after.

Q That is your conclusion, Mr. Kramer? A Those are the facts.

Mr. Dunn. I move to strike the answer out.

The Court. I will allow it to stand.

Q You did not see the chassis of this truck before the accident, did you? A Chassis of the truck, I did.

Mr. Dunn. I move to strike the answer out.

Q You did not see the—

The Court. I will let it stand.

Q You did not see the chassis before the accident, did you? A Your Honor, sir, I may be very much out of order, but I cannot answer I did not see the chassis when I did.

The Court. You have repeatedly said you saw it, excepting as it was covered by the body.

Mr. Dunn. I object to the pictures.

The Court. I will allow them; you may have an exception.

(Marked D-4 and D-5 in evidence).

By Mr. Chance.

Q Will you indicate on D-4 the place where the repair is made to the chassis by—let's see, what shall we put there? A "L" instead of "K".

Q All right, put "L" on there, that is "L" for Lawrence. A (Witness indicates as directed).

Q Put "L" on D-5 at the place where the repair was made? A (Witness indicates as directed).

Q Now, I see that on D-4 here you have made more than one "L". Does that signify that repairs were made in all of the places that you have marked by "L"? A As far as I can recollect, it does.

Q And the same thing, on D-5, you have made more than one "L"? A Yes, sir.

Q That indicates more than one repair, does it? A Yes, sir.

Q Speaking with respect to D-4, what kind of work is this repair work at the several places indicated by "L's?" A Why, I don't know what the mechanical term would be, but it had to be heated with these oxygen tanks torches, twisted into shape, strengthened.

Q Is that also true with respect to D-5? A Yes, sir.

Q Now, were you present when they hitched onto the truck to tow it away? A No, sir; I was not.

Mr. Chance. I guess that is all; cross examine.

Cross examination by Mr. Dunn.

Q Where was this discussion relative to the pictures had yesterday? A Beg pardon?

Q Where was this discussion relative to the pictures had yesterday? A I don't know that there was discussion, we had pictures.

Q Well, talk, then, Mr. Kramer; where was the talk? A Upstairs.

Q Was I present? A I don't recall whether you were present.

Q Mr. Chance implied that I was present? A You may have been there, I do not recall.

Q But you did not see me there, did you? A I do not know; I do not recall.

Q Did you say the front of your car was damaged, or not—fender of your truck? A I didn't say.

Q I will ask you; was it? A Not to my knowledge.

Q Was your radiator damaged? A Not to my knowledge.

Q Was your bumper damaged? A Not to my knowledge.

Q Well, your front fender damaged? A Not to my knowledge.

Q Was the lower base of your radiator damaged? A (No audible response).

Q The lower base of your radiator? A I say. I do not know.

Q You are the president of the Lawrence Kramer concern, are you not? A No, sir.

Q What office do you hold with the company? A Vice-president, and treasurer.

Q Did you receive any bills for those parts being repaired as a result of this accident, by Mr. Weinstein? A We did.

Q Did you pay for the repair of the bumper? A Yes, sir.

Q Or was it a new bumper? A I cannot recall, but the checking over the bills, I do not do unless it is on some particular—

Q Well, it is about twenty dollars, wasn't it? A What are you talking about?

Q Charge for the bumper on the repair bill? A I do not know.

Q Was there an item on it for a front fender? A I do not know. I did not check over the bill; I do not check over all of the bills.

Q You want to tell us now that you do not know whether those things— A I absolutely have not gone over that bill; I want to come here free and clear and be able to say that I have not gone over that bill.

Q You want to be free and clear? Did you pay the bill? A I did pay the bill, that is, the corporation; it is not one or two small little *orders*.

Q Big corporation, isn't it? A We think it is.

Q You do not even look over your bills when you

get them, do you? A I look over some of them.

Q You do not even look over the cars, if they are damaged, to see what injuries are done, do you? A I do not look over the cars?

Q Yes? A I said, I did.

Q But you do not know whether the radiator was damaged, do you? A You asked me if the radiator was damaged on the scene of the accident; I said, I did not know.

Q Now, we will be a little more careful. Did you look at the car after it got away from the accident? A I did.

Q Did you see the radiator then, look at the damage? A I did.

Q Was it damaged then? A I do not recall that the radiator was damaged.

Q Well, did you see the front fenders at any time after the accident?

Mr. Chance. I object to that, because it is no telling what might have happened to it between the time of the accident and the time he might have seen it.

Mr. Dunn. I will reframe that question.

Q When were these pictures taken—pictures of your car? A I cannot tell you the date; Mr. Heinrich has probably a record, he could probably tell the date.

Q Are these all of the pictures you have? A No, Mr. Werksman showed us a picture a little while ago.

Q Are these all of the pictures you have of your truck? A I haven't any.

Q Who has the pictures of your truck? A Mr. Chance.

Q How many has he? A I do not know.

Q How many more have you seen than those

that were produced here? A I don't know that I have seen any more.

Q Hasn't he got some that show the front of the radiator? A I don't know.

Q Didn't you see any with the front of the radiator damaged? A I did not.

Q Well, when you saw this truck of yours up in the—in Weinstein's place, did you see the front of the radiator then? A I did.

Q Was it damaged? A I cannot recall.

Q Was the front fender damaged? A I do not recall.

Q The only thing that you can recall is the damage to the chassis and the body; that is correct? A Which anybody could see.

Q Is that the only thing that you can recall? A That was enough.

Q Will you kindly answer my question, yes or no? Can you recall anything else that you saw? A Not at the present time; this was two years ago.

Q When you saw the Peskowitz' car after the accident, you said you were quite sure the radiator was smashed in, didn't you? A Yes.

Q But you couldn't tell about your own radiator, could you? A I said afterwards, when I saw the picture, that we cannot find now, I was much surprised to find that the Peskowitz' radiator did not seem to be broken.

Q And the wish was almost father to the thought, then, wasn't it? A That is a little heavy for me.

Mr. Chance. I object to that kind of a question.

Q Then the radiator was not smashed on the Peskowitz' car, was it? A According to the picture, it was not.

Q The hood on the Peskowitz' car was not smashed either, was it? A I think it was.

Q On this Exhibit P-14, it doesn't appear to be, does it? A It doesn't seem to be in perfect condition to me.

Q It doesn't seem to be smashed to me either; does it to you? A That is a difference of opinion.

Mr. Chance. I object to that; that is immaterial.

The Court. I will let it stand.

Q Will you tell the jury, who have looked at that picture, whether or not the hood on that car was smashed? A I think it looks to me as if it was smashed; it is not in the same condition as a good hood would be in.

Q In your opinion, the hood of this Peskowitz' car was smashed? A It all depends on how badly you call smashed.

Q In your opinion, it was smashed? A Partly smashed, yes.

Q Will you come down to the jury and point out where it was smashed? A Why, isn't that picture right here the same as it should be?

Q Point out to the jury where the hood is smashed on that car? A This part of the hood. If the hood, in my mind, is not smashed—I do not say it is smashed entirely—but if, in my mind, it is not smashed, it would be in here the same as any car. You notice here in this picture that was taken about by the front, there is the front mudguard, they had the front of the car—

Mr. Dunn. I move to strike out the answer.

The Court. Strike out the last part.

Q Do you wish to correct your statement about the hood being smashed? A No, sir; I do not.

Q In your opinion, the hood was smashed? A Yes, sir.

Q This picture shows it? A In my opinion, it does.

The Court. We will take a recess until ten o'clock, tomorrow morning.

(Evening Recess)

April 12, 1928; 10:00 A. M.

Mr. Chance. Mr. Kramer was on the stand; are you through with him?

Mr. Dunn. We are through with Mr. Kramer.

JOSEPH FOX, sworn.

Direct Examination by Mr. Chance:

Q What is your occupation? A Automobile mechanic.

Q Were you such in August 1926? A Yes, sir.

Q At that time, by whom were you employed? A Matthew Weinstein.

Q On the 2nd of August, 1926, did you go to the intersection of Seventeenth avenue and East 34th street and Vreeland avenue? A No, I did not go for the car.

Q Didn't go where? A I didn't go to the intersection of Seventeenth avenue.

Q Where did you go? A 31st street.

Q Oh, all right. You went to the place where Kramer's automobile was, didn't you? A I did.

Q When you got there, what did you do with Kramer's automobile? A I went up there and looked at it, and I found it couldn't be run out, so I went back for a tow car and towed it in.

Joseph Fox, direct

Q You later came back the same day with your tow rigging? A Same day, yes.

Q When you got back to the place with the tow car, what did you do? A I put the tow chain on, pulled it in.

Q Where did you put the tow chain on the Kramer car? A On the axle, right underneath the bumper.

Q In raising the car, was any damage done to the bumper? A It was; it was pulled up.

Q Now, will you just explain to the jury how it was brought by you? A Well, I put the tow chain on the axle and in pulling the car up the bumper was bent; instead of pulling forward, it was pulled up.

Q Well, at the time you affixed your tow chain to the car, was that front bumper bent before you started to raise on the truck? A No, not to my knowledge.

Q Tell us to what extent did the bending of this bumper by the raising operation and the hauling that was done by you necessitate the putting of a new bumper on the truck? A Yes, we twisted it all out of shape.

By the Court.

Q What do you mean, by raising the car, to tow it? A Raising the front end with the towing car.

Q Oh, with the derrick? A Yes.

Q So that the front wheels were off the ground? A Yes, the front wheels were off the ground, to pull it up.

By Mr. Chance.

Q Just describe as much as you can the condition in which that truck was, and what the damage was to it. A Why, when I brought it down to

the shop, we jacked the body up. Mr. Kramer wanted to have the truck fixed. We found that the right hand side of the chassis was cracked, completely cracked, both channels of the chassis underneath completely over to one side; the rear wheel of the truck, were spokes broken, and the housing itself was bent; we found the motor support arm or crankcase broken; different things on the motor was broken, due to the accident.

Mr. Dunn. If Your Honor please, I move to have that stricken out.

The Court. Unless he knows. How do you know it was due to the accident?

The Witness. The chassis was hit on the front end.

The Court. Now, how do you know that the damage that you have reference to was done by the accident?

The Witness. It was due to the car itself was in perfect shape two days before the accident.

The Court. It might have been in two or three other accidents, for all you know?

The Witness. No, I do not know.

The Court. Strike it out. What did you say about the motor?

The Witness. The motor support arm, on the crankcase.

The Court. That was broken?

The Witness. Right hand side; yes, sir.

Q Now, were you familiar with this car before the accident? A I was.

Q How did you become familiar with it before this accident on August 2, 1926? A Mr. Kramer had his driver bring it in for repairs before that.

Q How regularly? A Oh, sometimes twice a week, sometimes once a week; it is according, when things went wrong with it.

Q In other words, it was regularly serviced by you at Matthew Weinstein's garage? A Yes, sir.

Q Do you know what a governor is? A I sure do.

Q Well, was there—tell the jury, first, what is a governor? A The governor is a part of the truck which controls the speed of the motor, cutting down the speed of the motor, I mean, to whatever you want it, by adjusting it, and there is a seal put on it after this, to prevent the driver from interfering with it.

Q Was there such a contrivance as that on this truck of Mr. Kramer's? A There was.

Q What did you do with respect to that before the accident?

Mr. Dunn. Your honor please, I object to that.

The Court. Fix the time.

Q When did you last adjust this governor before the accident? A Oh, about a week before.

Q About a week before. When you adjusted it at that time, did it leave your custody sealed? A It did.

Q When you saw it the day after the accident, did it still bear the same seal that it had when it left you? A Same seal, yes; pierced seal.

Mr. Dunn. What was the answer?

The Witness. Pierced seal.

Q Now, tell us, how you had that truck governed? A The truck was governed between sixteen and eighteen miles an hour.

Q In what condition was this truck the last time that you had seen it before the accident? A Perfect condition.

Q Now, I show you a photograph, marked Exhibit D-2, and ask you if that is a correct representation of this truck body as it was when you saw it there at 34th street right after the accident? Not talking about the chassis or anything but the body. A That is the way I seen the body when it came into the shop; that was right after I towed it in.

Q Now, you notice that the back part is pushed back some distance from the vertical position.

Mr. Dunn. I object to that as being leading.

The Court. Yes, I sustain the objection.

Q Will you tell us how many inches the top of the boards on the body were pushed in?

Mr. Dunn. I object to that, if Your honor please, as being leading.

The Court. (Continuing) If at all?

Mr. Chance. He has already said, Your Honor, that it was.

Mr. Dunn. I did not hear him.

The Court. I will allow it then.

Mr. Dunn. Your Honor will allow me an exception.

The Court. You may have it. (To the witness) How many inches are they pushed in?

A Between four and six inches.

Q I show you another photograph here, which is marked Exhibit D-4, referring to the chassis only, the body part,—I am not directing your attention to the body now; is that a correct representation of that chassis after it was fixed? A That belongs to Mr. Kramer's chassis after we had it on horses.

The Court. A little louder.

A (Continuing) This is Mr. Kramer's chassis after we took the body and front axle and things

like that, when we lined the chassis up, to straighten it.

Q Now, you saw the chassis before the accident, didn't you? A Yes, sir.

Q What was its alignment then?

Mr. Dunn. Objected to, Your Honor please, unless the time is fixed.

The Court. Fix the time.

Q When did you last see the chassis before the accident? A About three days before.

Q When you saw it three days before, what was its alignment? A It was in perfect alignment.

Q When you saw it after the accident, to what extent was its alignment affected? A Well, right here in the center, there is a big belly on the chassis, and it was pushed over at least eight inches to the left hand side of the truck.

The Court. From the right to the left?

The Witness. From the right to the left, yes, sir; sort of a belly.

Q Now, I suppose you cannot naturally remember the details of all that you did without having something to refresh your recollection, can you? A I can remember some of them.

Q Tell us what you do remember about this truck. A I remember we put new crankcase bearings on the motor; we put new rear end housing in, straightened the frame; rear wheel, right rear wheel had to be repaired and bearings in the wheel themselves had to be renewed; two axles and flanges, that is what I remember; two rear axle flanges.

The Court. What else? You put a new bumper on, didn't you?

A (Continuing) We put a new bumper on, yes, sir; but that was not due to the accident. That was on account of our raising the truck up.

Mr. Dunn. Now, I move to have that stricken out.

The Court. No, I think that is proper, if it was necessary to pull the truck in.

Mr. Dunn. (After argument) Your Honor will allow me an exception.

The Court. You may have it. (To the witness) What else?

A We also put on a right and left front fender and brackets.

The Court. You did not tell us that they were damaged before?

A It was not damaged, not to the extend that they needed new ones, but on account of taking the whole truck out, Mr. Kramer said to put everything in order that needed to be fixed. The fenders themselves were broken three days before from the vibration of the truck; there was a crack across the bottom of it.

Mr. Dunn. What is that?

The Court. Fenders were broken three days before from the vibration of the truck.

A (Continuing) From the vibration of the truck, there was a crack across the bottom of it.

Mr. Dunn. I move to have that stricken out.

The Court. Why?

Mr. Dunn. He did not see the truck three days before.

Mr. Chance. Yes, that is when he fixed the governor.

The Court. Yes, it was an extra.

Mr. Dunn. Withdraw my objection.

The Court. All right.

A That is all I can remember at the time.

Q Now, I show you another photograph, I guess this is D-5; is that the correct representation of the wheel, of the remains of the wheel, or the part where the wheel was affixed to the truck? A Right there, that is the rear end housing.

Q Now, what was the matter with that rear end housing right after this accident, when you first saw the truck? A The rear end housing was pushed back toward the back of the truck, on the right hand side, that is this side here.

Q To what extent was it necessary for you to repair the rear end housing? A We had to take the housing out and put a new one in. The wheels themselves were out of line, that is, the right rear wheel, instead of running straight with the truck, it run out to the right.

Q That was the condition of the chassis right over the place where the left rear wheel was? A I would not say there was anything over the left rear wheel; it was the right rear wheel that was bent.

Q Right is what I mean. A Chassis had a kink over the right rear wheel.

Q How much of a kink? A Oh, I would say, three inches.

The Court. So that the chassis was bent eight inches in the middle, on the right side, three inch kink over the right rear wheel?

The Witness. Yes, sir.

The Court. Both on the right side?

The Witness. Yes, sir.

Mr. Chance. Now, I would like to have this bill marked for identification, so that I can conveniently talk about it.

(Marked D-6 for Identification)

Q Here is a paper which has been marked D-6 for identification; what is this? A That is the

bill from Mr. Weinstein to Mr. Kramer for repairs on this truck.

Q Have you checked that bill over for me so that you can by looking over this refresh your recollection so as to tell us what things were made necessary by this accident, and what other things were necessary by the condition of the truck as you had seen it three days before the accident? You do not have to look at it now, and take the time. I asked you, if you can do it? A I can; yes, sir.

Q Now, I call your attention to this wheel—

Mr. Chance. Or, I will offer this in evidence.

Mr. Dunn. Oh, I object to that. You are going to have him point out what was due to this accident, I understood you to say, and he started to do that, and then you interrupted him.

The Court. It has not been proven.

Mr. Chance. Well, all right.

Q Taking this to refresh your recollection, can you tell the court and jury the items and the amounts before that—just withdraw that. Do you know anything as to the correctness of the amounts shown as charges in that bill? A These here parts were taken off the price list of the Kissel Parts Company.

Q Well, do you know that to be so? A Yes, sir; that is correct.

Q Did you check them at the time? A I did.

Q All right, then read us the items which were due to the things which were not present when you had seen the truck three days before the date of this accident? In other words, point out the things that came from the accident, giving the amounts. A Acetylene and oxygen used on the

frame, $14.00; ..... to lift the cross-numbers, 72 cts.;—

Mr. Dunn. Just a moment, what is that?

A These are things we used on the truck due to the accident that we had to put on it.

Q That is what I asked him.

Mr. Dunn. Repeat the question, Mr. Dye?

(Question repeated by stenographer)

The Court. Well, that is the question, point out the items on that bill that were necessary that were not damaged three day before, when he examined it.

Mr. Dunn. All right, go ahead.

The Court. Can't we shorten this?

Mr. Chance. As far as I am concerned.

Q Suppose you tell us the things which were not due to the accident?

The Court. Well, let's do it a little different even from that.

By the Court.

Q That bill that you have in your hand is what? A Bill that was charged for repairs to the truck, to Mr. Kramer from Matthew Weinstein.

Q About this truck that we are talking about? A Yes, sir.

Q Now, what, on that bill, is there that is not due to the accident, or, rather, that was repairs for things that were needing repairs three days before? A Two kingpins, two kingpin locks.

Q How much is that? A Sixty cents for the kingpin locks, $3.70 for the kingpins. Two front spring bolt locks, thirty cents; nine half four inch —wire, $1.40; four terminal ends, twelve cents; straightening front axle, $5.40.

The Court. Was the front axle crooked three days before?

The Witness. It was crooked, yes, sir. Mr. Kramer told us to let it go because he didn't have time at that time to have that fixed up.

Mr. Dunn. I object to anything that was said.

The Court. Strike out what was said. I asked him if it was crooked; that is all I asked.

Q Go ahead? A One front wheel bearing and *cup,* bearing *cup* cone; one is $4.50, the other $6.00.

Mr. Dunn. Just a moment.

Mr. Chance. I object; we do not have to wait for him to take notes.

The Court. I will allow it. Don't waste time, gentlemen; I am going to leave early today.

(Discussion between Mr. Dunn and the witness).

Mr. Chance. I object to counsel comparing with the witness.

The Court. I will allow him to check it up, if it will save time. Got it?

Mr. Dunn. Yes, sir.

Q All right; next item? A One running board, $2.50.

Q Next? A One front fender iron bracket. $2.90; one front iron bracket *rather* (rear) $2.90; one front fender, right hand, one front fender, left hand—

Q How much? A $8.40 each. One steering knuckle, $12.50; drag link, $8.50; steering arm, $4.00; steering gear housing, $19.00; one front bumper, $25.00.

The Court. Leave that in.

A (Continuing). That is all that I can see on here that was not due to the accident.

By Mr. Chance.

Q Here it says on here, labor repairing truck due to the accident. Can you separate the labor which was employed in doing these various things that you have mentioned as not due to the accident from those which are due? A I can, but it will take a long time.

Q All right, we won't take that time now.

The Court. How much is the bill, total bill?

Mr. Chance. $1,112.10.

The Court. From which is to be deducted $91.07, according to my arithmetic.

Mr. Dunn. Plus such time as it takes to install, with which the witness—

The Court. Yes.

Mr. Dunn. —is unfamiliar at the present time.

Q How long was this truck in your garage, if you remember? A I will say, about a month, to a month and a half, something like that.

Q Do you know how long was spent in the repairing of it? Or, why was it there so long?

Mr. Dunn. I object, your Honor please; that calls for a conclusion.

The Court. Oh, I will allow that.

A Repairing the truck.

By the Court.

Q Did it take that long? A For parts, we had to wait for certain parts, it took that—

Q All right. A —long to repair the truck.

The Court. All right.

Joseph Fox, cross

By Mr. Chance.

Q Well, were these parts that you had to wait for parts which were necessary because of the accident? A Yes, sir.

Mr. Chance. I guess that is all.

Cross examination by Mr. Dunn.

Q Sure about that, aren't you, of course? A Yes, sir.

Q It could not be possible it was some of those other matters that you had to wait for?

Mr. Chance. Pardon me, just a moment. I would like to offer this in evidence at this time. I think it has been identified enough.

The Court. Let it be received.

(Marked Defendant's Exhibit D-6).

Mr. Dunn. Is that all?

Mr. Chance. That is all I wanted to interrupt for, yes.

Q What part of the front bumper was bent by this chain? A Center.

Q The right part of the bumper, right side of the bumper was all right, was it? A Everything was.

Q Perfect shape? A Yes.

Q Radiator was in perfect shape? A All but the bottom flange, that connects onto the radiator, that was broken off.

Q There was some damage to the base of the radiator? A That is the base I am talking about.

Q There was also some damage done to the timing gears? A Yes, sir.

Q That is right immediately behind the radiator? A Yes, sir.

Q But, of course, that was done three days before? A No, sir.

Q Didn't you? Oh, I beg your pardon. You included that as a necessary repair? A Yes, sir.

Q Now, going over this, everything that appertained to the front of the car, with the exception of the bumper, was damaged three days before the accident, wasn't it? A It was not damaged; it just needed repairing, that is all.

Q Everything, I will use that word; everything appertaining to the front of the car, with the exception of the bumper, was in need of repair three days before the accident? A That is, in front of the car itself, but not the motor; the motor is in the front end too.

Q Everything in the front of the car, everything, all of these repairs that you made, with the exception of the motor and the bumper, were repairs that were necessary three days before the accident, but repairs which you did not make at that time? A Yes, sir.

Q The front axle was bent three days before the accident? A It had a slight bend in it, but it could be run.

Q Did it have a greater bend after the accident? A No, sir.

Q Well, then, it was a slight bend that you corrected when you repaired it? A We took it out; yes, sir.

Q On your direct examination, you told Mr. Chance did you not, that three days before the accident this car was in perfect shape, didn't you? A Perfect running shape; yes, sir.

Q You call a car with a bent axle in perfect running shape, do you? A Yes, sir.

Q Have you been a repair man how long? A About ten years.

Q How long have you been doing service to Mr. Kramer's truck? A Ever since he bought it.

Q You examine them two or three times a week? A No, I don't say that; sometimes in twice a week, sometimes once a week, sometimes wouldn't be in for two weeks.

Q Well, on the average, one or two times a week? A I wouldn't say that, no.

Q Well, what will you say? A Just as I said before, that the truck came in sometimes once a week, sometimes twice a week, sometimes I didn't see it for two weeks at a time.

Q Sometimes you don't see them for a month, do you? A No, it was never out that long.

Q Most it was ever out was how long?

Mr. Chance. I object—

A Most, about two weeks.

The Court. Oh, I will allow that.

Q How old was this truck? A 1924, my recollection.

Q It had been in steady use ever since up to the date of the accident? A It had been in steady use up to the date of the accident.

Q Kissel truck, was it? What kind of a truck? A Two and a half ton truck.

Q They are pretty good trucks, aren't they? A I will say so.

Q You are a pretty good mechanic? A I think so.

Q When the trucks come in, you examine all portions of the frame and chassis? A No, sir; I would examine the parts that the driver says are necessary to keep the truck on the road.

Q Three days before the accident, did the driver tell you to look at the chassis? A He did not.

Q Did you look at it three days before the accident? A I did.

Q Just as a matter of curiosity? A No, sir; I was underneath the truck, adjusting the brake,

at the time, so that I noticed things underneath the truck, and at that time the chassis was all right.

Q You remember it from that reason, do you? A I remember that the chassis was not bent at that time, or I couldn't have adjusted the brakes properly.

Q I see; how many chasses do you go under a day? A Oh, quite a few of them.

Q You want to tell this jury that you remember three days before the accident that you looked at this particular chassis, and it was in perfect shape; you want to tell us that? A I remember that; yes, sir.

Q Now, did he call your attention to the front fenders on that occasion? A He did not.

Q But you just happened to notice them, and remember them? A I noticed the truck pulling into the garage.

Q How many trucks pull into your garage a day? A Why, not so very many; we would only have a few Kissel trucks there; it was mostly pleasure car work up there.

Q How many trucks pull in there a day? A Sometimes one, sometimes don't have any for a week.

Q How many trucks has Mr. Kramer? A Two Kissels, to my knowledge.

Q When was this truck in your garage before three days before the accident? A Three days before the accident?

Q Yes. A It was in three days before the accident.

Q When was the last time prior to that? A About a week.

Q How was the mudguards then? A Mudguards were bent but not bent—broken; as I said,

my attention to the long crack on the bottom was long before that.

Q You had known of that? A Yes; they were that way quite a while, but Mr. Kramer couldn't lay the truck up on account of he had to use it in his work.

Q Were they that way three days before that? A I don't remember, but he said he wanted them fixed.

Q But you do remember that they were that way three days before the accident? A Yes, sir.

Q Where was this damage to the front fender? A Right up on the top, on the inside, or at the left hand fender, right where the truck comes, from the vibration of the truck, it was cut—it was all loose there.

Q Where was the damage to the right fender? A Pretty near the same place, up on top.

Q It was not bent in on the front at all? A No, just loose, so you could wobble it.

Q To what did you attach the chain when you went to move the truck? A Axle, front axle.

Q You put it under or over the bumper? A Under the bumper.

Q That bent the bumper up, didn't it? A It pulled the bumper up, as we were raising the truck, yes.

Q What kind of a bumper was it? A Channel bumper, sort of a channel bar bumper.

Q Rather sturdy bumpers, aren't they? A Nothing extra; no, sir.

Q They are the ordinary bumpers they use on Kissel trucks, aren't they? A They are, yes.

Q Your putting the chain on the axle bent the bumper up? A When I pulled up, the chain should have been put over the bumper.

Q You put the chain on, didn't you? A Not exactly, I am the shop foreman.

Q Who put the chain on? A One of the helpers at the time.

Q Did you see him put it on there? A I did; I was right there.

Q Why didn't you take it off? A I didn't notice it, until after we were pulling it up.

Q Well, when the derrick took hold, didn't you notice it then? A I didn't notice it at the time, no.

Q When did you first observe that the bumper was being bent by the chain? A After we pulled it up.

Q You said it was a very heavy body, was it? A Very heavy truck; yes, sir.

Q Very heavy body. A Body was very heavy too; yes, sir.

Q How much would you say the body weighed? A Well, I couldn't tell you what the body weighed, never had it weighed; I couldn't swear to that.

Q About how much? A I couldn't swear to that.

Q Well, you heard them describe how it was all reinforced with steel? A Steel and iron.

Q And iron; it was a very sturdy body, wasn't it? A Yes, sir.

Q How did they raise the body off the chassis? A By tackle.

Q Where did they place the chains? Around the body? A Two chains.

Q Where did they place them? A

Q Of course, it could not be possible that a chain put on in that manner twisted it a little, could it? A Not the way we pulled it up.

Q You are very careful about bodies? A When we pull them up in the shop, yes.

Q I suppose you affixed that chain? A No.

Q Did your men affix that chain, too? A He had my orders, but I supervised him, that was the reason.

Q Now the steering housing had needed repairing three days before the accident, too? A Well, it needed to be adjusted, taken apart and overhauled, yes, sir.

Q Well, it didn't need a new steering housing, did it? A It did, after we took it down, yes, sir; there was worn parts in there which we couldn't fix up.

Q You passed them three days before as being in perfect running order, didn't you? A In running order, yes.

Q Yes. A There are lots of cars today on the road that need repairs.

Q I suppose there are lots of mechanics, like yourself, that let them think that they are in perfect running order, when they are not? A Yes, sir; in good running order.

Q The steering knuckle was in bad shape, too, wasn't it? A Yes, it was worn.

Q And the drag link? A Drag link.

Q What is that? A That is the rod that runs from the steering column to the steering knuckle.

Q It is true, is it not, that if a truck has a collision in the front, that is, if the front of a truck runs into another object, the steering apparatus is usually damaged? A Not always.

Q Usually? A Not always.

Q Well, usually? A I wouldn't say usually, no; sometimes, it is.

Q Sometimes the steering apparatus is damaged when the truck runs right head on into something? A Sometimes, yes.

Q Sometimes the front axle is bent when a truck runs into another object? A Sometimes.

Q Sometimes the drak link is damaged? A Sometimes.

Q And sometimes the front wheel bearing cap and cones are damaged when a truck runs into another object? A Very seldom; that is generally that way from wear.

Q Sometimes the lower base of the radiator is damaged when a truck runs into an object? A Sometimes.

Q Sometimes the timing gears, which are located, by the way, right back of the radiator, are they not? A I have never see any dent yet, they are encased entirely by a case.

Q Well, as a matter of fact, they are located right in the rear of the radiator, are they not? A In the rear of the radiator, yes.

Q Sometimes when a truck runs into an object, the timing gears are damaged? A I have never seen that happen yet.

Q You have been a mechanic, how long? A Ten years, ten or twelve years.

Q You are a good mechanic? A I hope so.

Q You are, of course, careful? A Yes, sir.

Q Sometimes front spring clips, front springs, are damaged when a truck runs into another object? A Sometimes.

Q And the front bolt locks are sometimes damaged? A (No audible answer).

Q Never damaged? A I have never seen them damaged, no.

Q But none of those things were damaged in this accident, were they? A Not to my knowledge. They were worn. They was not damaged; it was only the parts which had been broken, or anything which is worn.

Q Now, have you talked this matter over since last night with Mr. Kramer or Mr. Chance? A I haven't.

Q Eh? A I haven't.

Q Have you talked to them since it was brought out while Mr. Kramer was on the stand, that he was claiming for damage to the radiator and the bumper? Have you had occasion to talk to Mr. Chance and the other people in this case? A I have not; I am telling you the facts, that is all, at the time of the accident, what we had to do.

Q I am not asking you that; I am— A No.

Q Haven't you talked to them?

Mr. Chance. Objected to.

The Court. Objection sustained.

Q Have you talked to anybody? A To nobody in particular, anything appertaining to the accident.

Q Have you talked to anybody about the repairs that were made on this car, since Mr. Kramer was on the stand yesterday? A No.

Q Didn't you talk to Mr. Weinstein about them? A I did not.

Q You still feel that these repairs that I have talked about on the front of the car, with the exception of the motor and the bumper, that those repairs were necessary because of the condition of the car three days before the accident? A Well, the timing gears and that there bottom flange on the radiator was things due to the accident, and the reason the timing gears were worn was because the water pump was broken, and that was on a direct shaft with the timing gear, and when the water pump broke that jambed up the timing gears on the front end.

Mr. Dunn. That is all.

Redirect Examination by Mr. Chance:

Q Did you ever hear of a collision in which the front of a truck came in contact with a "nice"

sedan and smashed in the side of the body, at the rear, four inches? A I never did.

Mr. Dunn. I object to that, if Your Honor please; I do not know whether this witness is qualified to testify as to the effect of a blow or an injury to a Chandler sedan.

The Court. (After argument) I will allow it.

A I never did.

Q Did you ever know of a case where the front of a Kissel truck, such as was involved in this accident, broke up the housing on the right rear wheel by coming in contact with its front against a "Nash" sedan? A I never did k*no*w, not on a big truck.

Q Did you ever hear of a big Kissel truck like this, with its front hitting a nice sedan, kinking the chassis right over the back rear wheel, on the right? A I never did.

Q Did you ever hear of a Kissel truck, such as this, hitting a Nash sedan and causing any such injuries as you found to this car, when you inspected it right after this accident? A I did not.

Mr. Chance. (On being informed he is asking about a Nash sedan) Let's change it to a Chandler.

Mr. Dunn. Let's assume that you meant a Chandler all of the way through your questions, for the sake of brevity.

Mr. Chance. All right, let's assume it was that way.

The Court. Your answers would be the same thing, no matter what kind of a car it was?

The Witness. Any kind of a pleasure car; yes, sir.

Mr. Chance. That is all.

Recross-Examination by Mr. Dunn:

Q I forgot to ask you: The bowing that you have mentioned in the chassis would be about how far from the front of the car? Tell us from your recollection. A The big bow was right about here, that is where the chassis was knocked over between eight and ten inches from the center.

The Court. The question is: How far from the front of the car?

A Right in back of the driver's seat, back of the cab, is right here.

The Court. All right.

Q By this picture of the Chandler sedan, how far would you say this point in the rear of the rear door was from the front of the car?

Mr. Chance. I object to that question,—

A I don't know anything about that.

Mr. Chance. —because he has not said that he ever saw this Peskowitz' Chandler sedan.

Mr. Dunn. Withdraw the question.

Q How far is the rear door of a Chandler sedan from the front of the car?

Mr. Chance. I object to that; he has been asked nothing about distances on a Chandler sedan.

The Court. Yes, but he has been asked what would happen if a Chandler sedan hit another car.

Mr. Chance. Not what would happen to the Chandler, but what would happen to the Kissel.

The Court. Well, I will allow it.

Mr. Chance. All right.

Q Would you take these two pictures, please?

The Court. The question has not been answered. The question is: How far is the front door—

Q —from the rear part of the rear left hand door from the front of a Chandler sedan?

The Court. If you know.

A I do not know.

Q Well, about how far?

The Court. About how many feet?

A Eight or ten feet.

Q Now, about how far is the place on the—between the "C" and "E" in "Lawrence" on that truck, from the body of the truck, from the front of the car, from the front of the truck? A I will say about ten feet.

Mr. Dunn. That is all.

The Court. Will you figure up the labor, or have you got another witness for that?

Mr. Chance. I have another gentleman who is going to tell that, Your Honor.

The Court. All right.

JOHN F. HALLIGAN, sworn.

Direct Examination by Mr. Chance:

Q You work for my firm, do you? A Yes, sir.

Q Were you present in the court room day before yesterday? A Yes, sir.

Q Were you present in court yesterday? A Yes, sir.

Q While this case was being tried? A Yes, sir.

Q Did you see certain pictures which had been in the custody of Mr. Werksman? A I did.

Q I show you at this time certain pictures, Exhibits P-12, P-13 and P-14, and ask you if they

were some of the pictures that you saw? A Yes, sir.

Q Were there other pictures of the same size and of the same character in the pictures which you then saw? A Yes, sir.

Q What was the view of the car, of the Chandler car, shown by the pictures which are missing? A It was a front view, with the bumper hanging, on the left hand side, and there was a mudguard dented in.

Q With regard to Exhibit P-14, I direct your attention to the mudguard on the right front side. A That is dented.

Q Is that the same mudguard that was shown by the missing photograph? A Yes, sir.

Mr. Chance. That is all.

Cross-Examination by Mr. Dunn:

Q How many pictures have you? What is the name? A Halligan.

Q How many pictures have you?

Mr. Chance. I object, because—

A I haven't any.

The Court. Objection sustained.

Q You have quite a number of pictures, haven't you?

Mr. Chance. I object to that, not cross examination.

The Court. Objection sustained.

Q Are you sure it was not one of your own pictures that you saw? A I am positive.

Q Where do you reside? A Jersey City.

Q What is your occupation? A Investigator.

Q Where is your office? A 1 Exchange Place.

Q That is all; and you are connected with Mr. Chance, are you? A Yes, sir.

Mr. Dunn. That is all.

Redirect Examination by Mr. Chance:

Q Just one more question, since we are on the thing. Mr. Dunn has asked you about pictures. Have you ever seen any in Kellogg & Chance's custody? Are these all of the pictures, that Exhibit D-3, D-4, D-2, D-5? Did you ever see any other pictures in the custody of the defendants, or either of them, or anybody connected with the defendants? A No, sir; these are the only ones I saw.

Mr. Chance. That is all.

Re-cross Examination by Mr. Dunn.

Q Wait a minute. Where is Mr. Rogers today? A I do not know.

Q You do not know what pictures he has, do you? A No.

Q He is connected with you, too, isn't he? A No, I work for Kellogg & Chance.

Q Wasn't he up here on this case? A No, not that I know of.

Q You mean to say you do not know that he was up here on this case? A I certainly mean to tell you that he was not up here on this case, yes.

Q Was he in the court house yesterday? A Yes, sir.

Q With you? A He was sitting with me, yes.

Q And Mr. Chance? A I don't know whether he was sitting with Mr. Chance, or not.

Q Talking with you two gentlemen in the hall? A Certainly.

Q Was he here the day before? A I think he was.

Q Was he talking with you, me and Mr. Chance— A I do not know.

Q About this case? A I do not know.

Q You do not know that? A No.

Q Wasn't he, then, in your presence, talking about this case? A No.

Q You do not know where he is today, do you? A No.

Q You do not know what pictures he has, do you? A No.

Mr. Dunn. That is all.

Redirect Examination by Mr. Chance:

Q Just a minute. As you were talking about Mr. Rogers here, what case was Mr. Rogers here to see me about yesterday? A A case that Mr. Dunn's partner has, Mr. Moskowitz,—is it? is that his name?

Q He is not a partner, but Mr. Moskowitz? A He is connected with Mr. Dunn's office, with the case he was talking with you about yesterday.

Q By Mr. Dunn's office, you mean the Prosecutor's Office? A Prosecutor's Office.

Q That case was pending on the calendar in Judge Newman's court yesterday, wasn't it? A Yes, that is all.

Q That is all. A 1100, that is the number.

Mr. Dunn. That is all.

MATTHEW WEINSTEIN, sworn.

Direct Examination by Mr. Chance:

Q Mr. Weinstein, you are the gentleman whose name has been mentioned before here as having the garage that made the repairs to Mr. Kramer's company's truck, are you? A Yes, sir.

Q When did you first see this truck after the accident which happened August 2, 1926? A I saw it the day they brought it in.

Q At the time they brought it in, what was its condition? A Why, the frames were bent and the body was caved in, on the right hand side.

Q I did not catch what you said were bent in. A Frames were bent right back of the driver's seat and the body was caved in.

Q Explain to the jury the extent to which the body was caved in and the frames bent back of the driver's seat. A Why, it seemed as if some heavy object had struck—

Mr. Dunn. Now, if Your Honor please, I move to strike that out.

The Court. Strike it out.

Q Tell us the extent.

The Court. If he knows.

Q To which it was caved in. Don't tell us why but what. A Well, the channel sections of the frame were bowed, that is, caved in, back of the driver's seat, that is the frame, that way.

Q How many inches would you say this was caved in, toward either the right or left? A About eight inches.

Q About eight inches? A Yes.

Q I show you picture, Exhibit D-2, and ask you if that shows the appearance of the body of that truck in general? A Yes, it does.

Q Where was the place that the body was caved in about eight inches? A Right back of the driver's seat, back of the cab.

Q When you say back of the driver's seat, do you mean on the right hand side of the truck or the left hand side? A No, the right.

Q Where is it with respect to that letter "K" that is now on this Exhibit D-2, that the body was caved in? A Letter "K", you mean here?

Q No, the one that is put on there with the ink, that is supposed to be "K", I believe. A Oh, up here?

Q Yes. A Are you talking now about the channel or the body?

Q About the body. A Body was caved in right here; you can see it.

Q By "right here", you refer to the place—? A Where the letter "C" is.

Q —where the letter "C" is. How thick were the boards in the side of that body? A About two inches.

Q What was the kind of reinforcement? A Reinforced with steel bars in the usual reinforcement that is put on a heavy body.

Q About how thick would you say these steel bars were? A About an eighth of an inch, that is, the steel that runs along the bottom of the body only, an eighth of an inch, although some of it was a quarter of an inch thick, some of it three-eighths thick; there are various braces on a body. It all depends on which you are referring to.

Q Well, I show you another picture, D-4, which is marked at various places with the Letter "L". A Yes.

Q Will you tell us what was the condition of that chassis at the places marked with Letter "L" before the repairs had been made? A Well, both of these frames were bowed.

Q Turn it around so the jury can see. A Both of the frames were bowed. The impact apparently was across there, and it was due to the cross movement there that is pushed over that way, or from the right to the left; there is where the cross members are kinked out here, in other words, where the impact took place here, goes in that way (indicating).

Q Where is the front? Which is the front of this? A That is the front; that is the rear (indicating).

Q That is the front? A Yes.

Q Will you just show us again how the kink was, showing the direction? A That way (indicating.)

Q Where would the driver's seat be with respect to the third of these letters "L" on the right hand side of the frame? A It would be right in this--right here (indicating).

Q Now, you did not see the truck before it came into the shop that day, did you? A No, I did not.

Q When had you last seen it before that day of the accident? A I cannot just recall when I last saw it.

Q Well, was it regularly serviced by your garage? A Yes, sir; it was.

Q As nearly as you can recall, about how frequently would it be in the garage before the accident? A Well, we have an inspection system that requires that trucks that we sell come in once a month.

Q This was one of the trucks which was thus subject to that inspection system, was it? A They are all, yes.

Q What does that inspection system include?

Mr. Dunn. I object to that as irrelevant and immaterial.

The Court. What relevancy has it?

Mr. Chance. To show how familiar he was with this truck.

The Court. He was not familiar with it at all. I assume it was his employes that did the work on it. Is that right?

The Witness. Yes.

Q Is that right? You do not? A I know it when it comes in, that is all.

Q When the job was done, these repairs had been made, was this bill, of course, made up under your supervision? A Yes.

Q Will you separate from the items on this D-6, the items or the item, with respect to labor repairing truck due to accident, so as to tell us about how much of this labor work was not due to the accident? A Well, I just looked at that bill a moment ago. I can tell you in a few moments, to check it again, if you want me to. (Examining exhibit D-6.) There was about $75.00 worth of repair on here that has nothing to do with the accident.

Q So that all but about $75.00 of that $502.27 item is due to this accident? A That is right.

Q Now, did not notice the front bumper at the time that the truck came in, had the—withdraw that. When this truck came in had the towing and hoisting rigging been removed from the front of the truck? A When the truck was brought in, it had been removed.

Q Yes? A I did not pay any attention to that at all.

Q You did not pay any attention to it? You do not know anything about the front bumper? A No, I do not.

Q All you know, you made a charge for the front bumper? Cannot tell how that got off? A No, I cannot tell how the front bumper was damaged. You see, we make the charge from the requisitions that come into the stock room for material that is used.

Mr. Chance. I guess that is all.

The Court. Are these charges and parts that you have charged on that bill reasonable?

The Witness. Yes, sir.

Q And the labor charge is also? A Yes, sir.

Q What experience have you had with driving cars? A Twenty-six years.

Q During part of this time, were you the driver of a racing car? A Yes, sir.

Mr. Dunn. I will admit his qualifications, as a fast man.

Mr. Chance. His ability to testify?

Mr. Dunn. Yes, sir; his ability to drive cars at great rates of speed.

Q Well, would it be possible for a car going at twenty-five miles an hour, a Kissel car such as this big truck was, to make the course which is indicated on this map by the line from B-1 that I am describing here with my pen point over to B-2?

Mr. Dunn. I object to this question, however, this question in physics that he is propounding, not on a question of a speedy car, but on a question of a driving of a truck.

The Court. It may involve physics, but it is also a practical question as to how sharp an angle a truck can be driven. If he has been driving a car for the many years he said,—I have forgotten how many,—I think he can testify to that.

A All right, put the question again.

Q Would it be possible for a Kissel truck, such as this one of Mr. Kramer's was, to go along at twenty-five miles an hour, along this line from B-1 and make such a turn as is described by that line, which follows the course of my pencil? A I would not say it was safe to do.

By the Court.

Q Well, is it possible? A It is possible.

Q To make a sharp turn of that kind? A But this particular truck couldn't—

Mr. Dunn. Now—

Mr. Chance. This particular truck, what I am asking you about.

The Court. He started to say this truck couldn't go twenty miles an hour. I will strike that out.

Q But you are asked, not the speed, but the angle of the turn. A It is possible.

The Court. It is possible. All right.

By Mr. Chance.

Q Do you know anything about the governor on this truck yourself? A I know there is a governor on it, and I know that our trucks, that size trucks, are governed down to eighteen miles an hour.

Mr. Dunn. How many?

The Witness. Eighteen.

Q Is that part of your regular inspection service? A It is a very strict one.

Mr. Chance. All right.

The Court. Well, it wouldn't make any difference, whether it were going eighteen or sixteen or fourteen, with respect to the angle at which it turned, would it?

The Witness. No.

Mr. Chance. My question is assuming something that he said could not be possible.

The Court. Yes, I know.

Mr. Chance. That is all.

Cross examination by Mr. Dunn.

Q Mr. Weinstein, how high above the ground was the body of the truck? A The bottom or the top of the body?

The Court. The platform.

Q Take the body first. A The platform on that truck is about four feet, four inches, I think.

Q Four feet four inches from the ground? A Yes, but I am not positive about that.

Q If you do not know, who does, Mr. Weinstein?

Mr. Chance. I object to that.

The Court. Objection sustained.

Q You think it is about four feet four inches from the ground to the platform? A Yes.

Q How high is the side of the truck? A The side of that body is about twenty inches or twenty-two inches.

Q So that the top would be about 6-2 from the ground? A I should say that, about, yes.

Q Is that correct? A (No answer).

Q Of course, you are familiar with Chandler sedans, aren't you, Mr. Weinstein? A Not so very; I know in a general way about them.

Q Well, you service some of them, too, don't you? A Yes.

Q How high is the radiator, top of the radiator, on a Chandler sedan, such as this? A I cannot answer that definitely; there are various models of a Chandler sedan.

Q How high would you say the top of a radiator on a Chandler sedan was? A I would say in the neighborhood of about four feet, four feet and four or five inches.

The Court. Four foot, or four foot, four or five inches. Little louder, Mr. Weinstein.

The Witness. Yes.

Q Now, Mr. Weinstein, will you point out what part of that Chandler sedan could come in contact

with the board on the side of this truck? A The car couldn't do that—

Mr. Chance. I think that is not a proper question for him to testify to; that is a question for the jury to determine.

The Court. Yes, I will sustain the objection.

Q Could the radiator or the front of that car—

Mr. Chance. I will make a general objection to the question; that is for the jury to determine.

Mr. Dunn. Let me finish the question. This man is an expert on speed and the ability to turn cars.

The Court. But the point is, this witness has told you the distance from the ground of the channel iron, or whatever you call it. He has also told you the distance from the ground to the top of the radiator. Now, it is for the jury to say whether the radiator would go under the truck or hit it.

Mr. Dunn. I think this witness is qualified to answer that question, too.

Mr. Chance. Yes, but it is not a subject for expert opinion.

Mr. Dunn. That is all.

The Court. No, I think that is a question for the jury.

The Court. Anything else?

Mr. Chance. No, that is all.

DEFENDANTS REST.

The Court. Any rebuttal?

Mr. Dunn. Yes.

PLAINTIFFS' REBUTTAL.

ROBERT W. HAMILTON, sworn.

Direct examination by Mr. Dunn.

Q Mr. Hamilton—is that correct? A Yes, sir.

Q What is your business? A Service manager.

Q Where? A Center Sales Station.

Q Did you have occasion to repair the car of Mr. Peskowitz during the year 1925? A Yes.

Q When was it, do you recall? A Along in July.

Q After July 14, 1925, was it? A Yes, it was in July.

Q What were the repairs that you made to the car at that time? A Front fender, running board, straightened frame.

Q What was your bill for the repairs? $181.00, I think it was? A Something like that, yes; I have a duplicate of it here.

Q Well, I will withdraw that question. What was the condition of the car when it left your place after it was repaired in July, 1925? A It was as near perfect as possible.

Q You put new parts in, did you, for those that were broken? A Yes.

Q Now, did you see it between that time and August 2, 1926? A Yes.

Q Did you have occasion to see it during that time? A Yes.

Q What was its condition prior to August 2, 1926? A In good shape.

Mr. Dunn. That is all.

Cross examination by Mr. Chance.

Q When you saw this car after the accident of the 14th of July, 1925, was the car totally destroyed, demolished?

Mr. Dunn. I object to it, if your Honor please, being irrelevant and immaterial.

The Court. I will allow it.

Mr. Dunn. (Continuing). General allegations of a pleading.

A No.

Mr. Dunn. My exception noted.

Q It was not totally destroyed or demolished? A No.

Mr. Chance. That is all.

Mr. Dunn. We rest.

PLAINTIFFS REST.

BOTH SIDES REST.

Mr. Chance thereupon summed the case to the jury on behalf of the Defendants.

Mr. Dunn thereupon summed the case to the jury on behalf of the Plaintiffs.

NOON RECESS.

April 21, 1928, 1:45 P. M.

Thereupon, the Court charged the Jury as follows:

Ladies and Gentlemen of the Jury:

This case that you are called upon to try is one that arises out of an automobile collision which occurred on August 2, 1926, in the City of Paterson, between the car of Reuben Peskowitz, which was being driven by his daughter, Bessie Peskowitz, and an automobile truck which was owned by Lawrence F. Kramer, Inc., but which was driven by Mr. Jacobus Kuiper, who was employed as a driver for the Lawrence F. Kramer, Inc.; and the basis of the suit is negligence. That is to say, the plaintiffs in this suit claim that they received their hurts through the negligent operation of the car of the defendant.

Now, it seems that the Peskowitz family were returning from a week-end trip in New York State, and that on the day in question they left the place where they were at somewhere around six in the morning, made two stops, and that from Suffern to the place of the accident Miss Bessie Peskowitz was driving; that in the car with her was her father, Reuben Peskowitz, and her mother, Diana Peskowitz, her married sister, Jennie, and Jennie's husband, Mr. Shapiro, and her baby sister, Dorothy, who was four and a half at the time I think the testimony was, and her brother, Milton. It was a seven passenger sedan. The seats were all occupied by the people mentioned, except one of the folding seats, which was used for the placing of baggage thereon.

Somewheres near noon-time the plaintiffs say they were traveling in a southerly direction on Vreeland avenue, Paterson, to the right of the center line of the road, between the car tracks, which

are in the center of the road, and the right hand curb, at the rate of speed which has been estimated by some of the people in the car—Miss Bessie, who was driving says that she was going—well, I did not mark it down, I am sorry; she did say that the truck—oh, yes —she said that she had been going about twenty miles an hour, then as she approached Seventeenth avenue she slowed down because of the crossing to about fifteen miles an hour; that she saw a truck, going twenty-two to twenty-five miles an hour, approaching her, which was over on the opposite side of Vreeland avenue, traveling in a northerly direction; that as she was crossing the intersection made by Seventeenth avenue, Vreeland avenue and East 34th street, she saw the driver of that truck, which was the defendant's truck, leaning out of the side of his cab and looking back, and as he did, his car veered to the left, that is, to his left, and when she saw that it had started to come over toward her side of the road she put on her brake—her emergency brake—and stopped within a distance of ten or fifteen feet—I have forgotten just what she said precisely—which brought her past the southerly line of the Seventeenth avenue curb, that is, if the southerly line of the Seventeenth avenue curb were extended, it brought her to a point beyond that; that as she stopped, this car, with the driver still not looking at her, crashed into the side of her car at a point between the fender and the front door, or at the front door, which caused the truck and both cars to sway, or move, or swerve, and the back of the truck, or part of the side of the truck—the right side of the truck, came around and struck the sedan again on the left side but further toward the rear, and that the truck then proceeded in a circle into a point at East 34th street just off Seventeenth avenue; on

the westerly curb of 34th street, and the point where the collision occurred was beyond the southerly curb line of Seventeenth avenue and not in the intersection; and Miss Peskowitz says that as she approached Seventeenth avenue she sounded her horn, and Mr. Shapiro, her brother-in-law, bears her out in that statement. She did not blow her horn or signal when she saw the truck starting to turn and when she applied her brakes. Mr. Shapiro also testified to the driver of the defendant's truck turning and looking back, and there was a car behind him, they say, a Chevrolet; and because of the force of this collision, the occupants of the plaintiffs' car were more or less hurt.

Mrs. Peskowitz was the most seriously injured, suffering a fractured arm, a fractured rib, a hurt back, a hurt knee, and bruises and contusions otherwise on the body. An ambulance was called and they were taken to the hospital, where Mrs. Peskowitz remained for some time, and where they received—I am not sure—I think that they received first aid treatment in Dr. Mendelsohn's office. Perhaps the others were not taken to the hospital; I am not sure about that. But there were the injuries that the mother complained of, which I have indicated, and which caused a pleurisy condition, Dr. Mendelsohn says, by trauma—traumatic pleurisy—which left adhesions and which is incurable; that she had bruises to her chest, her leg, and her body, and that water on the knee developed because of the injury to her left knee; that the sacro-iliac joint in the left hip region was hurt, and that he treated her until November 20, 1926; that she was in the hospital for a period of ten days, that she is still quite nervous, that she has pain in her arm and is unable to raise it, has pains in her knee, and there is a shortening of her forearm because of the

fact that the bones were not brought into exact alignment and therefore necessitates a shortening —he did not attempt to say to what extent; that in his opinion there is a disability in her arm of 25 per cent. and in her knee and hip of 30 per cent.

He says that Reuben had a deep cut through the dorsum of his right hand and a cut ring finger, left shin and knee were abraided or bruised, that he saw him but twice.

That Bessie had two long lacerations in the calf of her leg and bruises;

That Jennie had two lacerations on her left hand and two puncture wounds in her forehead, black and blue marks;

That Dorothy was bruised but required no treatment;

That Mr. Shapiro was also bruised and shaken up, but required no treatment, except that which he received at the hospital where he was engaged as an auditor; and he is not a party to this suit.

Now, outside of the occupants of the plaintiff's car who described the incidents, those who saw it,—and the mother, you will remember, did not see it, and Mrs. Shapiro, I think, did not see it, and Mr. Peskowitz saw part of it, I think, and he told what happened afterwards, at any rate,— in addition to them there was the witness produced by the plaintiff named Riley, who, you will remember, was the gardener, who was driving on East 34th street and stopped on the right hand side of East 34th street, and he was facing the scene of the accident and he saw it; and as I recall his testimony, it was that the defendant was making a left turn to go into Seventeenth avenue when the collision occured, and he did not corroborate Miss Bessie Peskowitz nor Mr. Shapiro that the car was stopped, that is, the plaintiff's

car, but said it was coming to a stop, and he told where the accident happened with respect to the point in the road where it happened. He says that the defendant cut across and the right front wheel of his truck hit the plaintiffs' car near the front door and on the left side, that the plaintiffs' car was knocked to the west, and as the truck broke loose it sideswiped and wrenched off the door and the driver of the plaintiffs' car fell out; that the defendant's car stopped about fifty feet over on East Thirty-fourth street after the accident, as he helped the ladies out, and that the truck had not entered Seventeenth avenue; that the speed of the defendant's truck was about twenty miles an hour, and that the plaintiff's car had just about stopped at the time of the accident, and that there was a Chevrolet car coming behind the truck, that he saw the defendant looking out to see if all was clear behind him just before the accident; and he said that he thought that he had his head out at the time of the accident but he could not be positive about that, nor could he be sure whether he slowed up, or not; he also said that he heard a horn and looked up and then saw the sedan but does not know whether the horn came from the truck or from the sedan or somewheres else. That was the man, you will remember, who did not give his name but refused to give his name to anybody, but forgot apparently that his name was painted on the side of his wagon or his truck.

We have the police officers who came there, Sgt. Albers and Sgt. Graves, shortly after the accident, and who told you of the physical conditions that they found there at that time, the marks on the road which they have described minutely. Then we had the witnesses with respect to the damage to the respective cars, and we had the defense witnesses.

Their defense is that this accident did not happen as has been described by the plaintiffs and the plaintiffs' witnesses, that the truck did not run into the sedan but that the sedan ran into the truck. Mr. Kuiper says that he was driving and he did not look behind, as was described, but looked over his shoulder, by turning his head slightly, through a window in his cab, and saw the Chevrolet behind him but a sufficient distance behind him not to interfere with his making a left turn into Seventeenth avenue. He just gave it a glance, he says, and does not know how far behind it was,—just saw that it would not interfere with his turn. He said that he saw the on-coming sedan on the other side of the road, and it was a distance up Vreeland avenue, or north on Vreeland avenue, from Seventeenth avenue, considerably further than he was from Seventeenth avenue, and so, not realizing the speed or being able to judge the speed of it, because it was coming directly toward him, believing that he had plenty of time to turn the corner into Seventeenth avenue, where he was going, he started to make a left turn, and while doing so the car of the plaintiffs came so rapidly and was driven so carelessly and negligently that it crashed into the side of his truck, hitting the side of his truck just back of the cab, on the right side, and denting in or bending in the body the number of inches which have been described, and mashing or bending or bowing, as it has been variously described, the side member or top of the chassis, in from the right to the left eight inches, and then, I think, the side struck it, but I am not sure, further back, or sideswiped it, but, at any rate, it was testified to that there was another kink in the chassis further back, on that same side, which I am not sure, the testimony it, was caused by a direct blow, or, as one witness said, as a result of the other bend, causing

it to bend there also, because of the brace piece. You will remember what the testimony was with respect to that. And he therefore says that the car was not at a stand-still but ran into him. The defense, therefore, is that there was, first, no negligence on the part of the driver of the defendant's car of any kind, but that there was negligence on the part of the driver of the plaintiffs' car, and that the driver of the plaintiffs' car was at fault. So the defense says, they ask for a judgment in favor of both defendants, because there was no fault on the part of the driver of the defendant truck, and, secondly, they ask for a verdict because even though there was negligence, which they deny, on their part, there was also negligence on the part of the driver of the other car. I will speak more about that later.

Now, there were pictures brought here with respect to the condition of both cars after the accident. There were no pictures produced of the front of the plaintiffs' car, except that part of the front which you could see from the side. As I recall it, they were all side views. I do not recall where the car is now, but there is no testimony on the part of the plaintiffs that there was any damage to the front of the car, but, on the contrary, their testimony is that there was no damage, except, as shown by the photographs, to the side of the car, and the photographs were taken to show the damage. The other photographs are of the defendant's truck, and between the date of the accident and the time of the taking of the photographs the body had been removed, and some of the photographs show the chassis after it was repaired. They are allowed in evidence, not to show the condition then but because of what they show with respect to what the testimony was as to the condition of the truck just after the accident. You

are asked to assume that the chassis was bent or dented at the places where the photographs showed that it was repaired, and not because the photograph shows the dent. The body of the car does show, I understand,—I did not examine the photographs—the damage that they contend was caused to the side of the body.

Now, the defense not only disclaims liability but has a counter-claim; that is, in answering this suit, it has not only denied liability but because it denies negligence and because it says that the accident was solely the fault of the plaintiffs, it contends, therefore, it has a right of action against the plaintiff for the extent of the damage done to the truck, and that counter-claim is put in, of course, not by the driver, but by the owner of the truck, the corporation, and it has introduced testimony to show, on that counter-claim, that the truck was taken down and repaired, the body taken off and the chassis straightened and the broken parts repaired. But, in addition to repairing the broken parts caused by the accident, they also renovated it and put it in order, gave it a general overhauling and replaced certain parts to the mechanism that were not broken or damaged in any way in the accident but which were worn and needed repairing. The bill for the entire job was $1112.10, from which must be deducted $91.07, which was the cost of the parts that were put on and which were not necessitated by reason of the accident, and further deducted the amount estimated by Mr. Weinstein of $75.00 for the labor on that part of the job, which leaves $946.03, according to my calculation, representing the parts and labor in the repair bill for repairs to the truck due to the accident. That is what the defendant asks to be compensated for against the plaintiffs, Reuben and Bessie Peskowitz.

There has been some dispute with respect to whether or not there was not another picture in the possession of counsel for the plaintiffs, which showed the front of the plaintiffs' car, which was not introduced in evidence and which was in court, the defense says, and which has been testified to on behalf of the defendant, was seen by some of the defendant's witnesses, or one of them—I have forgotten whether it is more than one, or not—which showed the front fender to have been hanging loose, —the front fender on the sedan, the plaintiffs' car, and also a dented mudguard.

On the other hand, the attorney for the plaintiffs denies having had such a picture in court or in his possession.

Then, there has been some testimony on behalf of Mr. Reuben Peskowitz that his car was in perfect condition just before the accident, and by the dealer who sold it to him; and, to rebut that, the defense shows that at some time prior to this time he had had an accident,—July 14th, perhaps, of 1925,—in which this car was involved, and that the pleadings in the suit that he brought then for the damage to his car claimed that the car was totally demolished.

In answer to that, counsel has argued that that was what counsel claimed in that suit,—Then it develops, the plaintiffs show that the car was injured in July. Mr. Hamilton, I think, took the stand, and testified that he was the service manager of the Chandler place, where the car was being serviced and, I think, where it was purchased, who says that it was repaired about that time, and he told in what respects, and new parts were installed, at a cost of some $180-odd, and counsel for the plaintiff takes the position that it is customary among lawyers to claim everying and take what they can get. There is no denial that the plead-

ings were as claimed by the defense, but in answer the plaintiffs say that that must not be taken literally and did not mean literally what they said.

Now, that, in brief, is the testimony, as I recall it, without attempting to elaborate it or detail it any further, with the exception of the amount of expense, which I will refer to later.

It is true, under the law, that a car on the right of another car has the right of way when both cars come to an intersection at the same time. It is also true that the law specifies the rate of speed which it is lawful to travel at on the public highway and in the built-up sections of a city and in the open country, and that horns must be sounded under certain circumstances and conditions, and that vehicles must travel to the right of the center line of the road, and when turning a corner that the turn should not be made until the vehicle has come to the point of intersection,—in other words, that there should not be a short turn but a wide turn.

Now, if either of the parties to this suit have violated any of the provisions of the law that I have referred to, you may take those things into consideration in finding where the fault lay, or the negligence; but they are not necessarily conclusive. They are just factors for you to consider. For instance, it may be that the corner there, being an unusual one, because of the space between Seventeenth avenue and the point between Vreeland avenue and East 34th street is very wide, and there is an unusually wide space there because of the peculiar crossing of those streets at the angles at which they cross, and it may be that a reasonably prudent person would have turned from the right side of Vreeland avenue, going north, to go into Seventeenth avenue, more quickly or sooner than he would, if it were just a right angle turn of two intersecting streets.

What I mean is that the law might be violated with respect to speed, or signals, or turning, and that would not necessarily be an act of negligence. A car may be going faster than the law allows it to go, but if the conditions were proper it would not be a negligent act.

That brings us to the question of what negligence is, and the law has defined it to be the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing something which a prudent and reasonable man would not do. The test, you will observe, is not that of the particular man or woman, but of the reasonably prudent person. That is the issue here, with respect to negligence, not whether the law was violated but whether the persons acted as reasonably prudent persons should have acted under the circumstances and conditions that existed at the time and place where this accident occured. Of course, if any violation of the law was committed, that is a factor that you may take into consideration in determining the question that you are to decide, as to whether there was any act done which a reasonably prudent person would not have done.

Now, the law denies relief to anyone who is at fault, even though the other person who was also involved in the accident was at fault. There can be no recovery for Bessie Peskowitz, if she contributed in any way to this accident by being negligent, by doing something which a reasonably prudent person would not have done, even though there was negligence on the part of Mr. Kuiper.

Of course, if there was no negligence on the part of Mr. Kuiper, if he did nothing that a reasonably prudent person should not have done, that ends the

case as against all of the plaintiffs, and there must be a verdict of no cause for action. But if you find he was guilty of an act of negligence, and there was also an act of negligence on the part of Bessie, who was driving this car, that in any way contributed to this accident, then again there must be a verdict of no cause for action as far as Bessie is concerned, and also as far as Reuben Peskowitz is concerned, if you find that she was acting for him, he being the owner of the car.

But if you should find negligence on the part of Mr. Kuiper and no negligence at all on the part of the driver of the other car, then, of course, all of the plaintiffs are entitled to recover. But even though you find there was contributory negligence on the part of Bessie that would bar her recovery and her father's recovery, as far as his injury is concerned, and as far as the damage that he sustained to his automobile, and the expense that he was put to with respect to his own hurts, and anything for his own pain and suffering, if you find that he was in charge of the car, as it was his car, and if you find she was acting for him, that would not bar the other plaintiffs from recovering, if you find negligence on the part of Mr. Kuiper.

Now, Mr. Peskowitz says that he drove a part of the distance, that it was his car, and that he invited his family to go with him, and if I am right in that, then, of course, it is easy for you to decide the question as to whether she was, in fact, driving his car at his request, as his agent. I do not know that there is any testimony other than I have commented on. And if you find that there was negligence on the part of the driver of that car, that will bar the recovery of Reuben, the father, under the circumstances that I have cited, if you find the fact to be that she was driving it for him, as his

agent, but, as I have stated, it will not bar the recovery of the mother, Diana, nor Dorothy, nor Jennie Shapiro, because any negligence of the driver cannot be imputed to other people, other than the person for whom she was acting. In other words, Mrs. Peskowitz and the other children and the other occupants were invited guests, I think, under the testimony, and under those circumstances any negligence of the driver of the car in which they are guests is not their negligence and cannot be imputed to them, so that if you find negligence on the part of the defendant Kuiper, no matter how you find as to Bessie, as to her negligence, there must be a recovery for Diana, Dorothy and Jennie Shapiro.

Now, what damage have they sustained? Taking first, Reuben, the father—and I wish some member of the jury might note these figures—he paid $15.00 to Dr. Mendelsohn and $84.00 to Dr. Koven, to cure himself of his hurts. Then, in addition to that, he paid $10.00 for the towing of his car. In addition to that, if he is entitled to recover, he is entitled to recover the difference between the value of his car just before the accident and just after the accident. The only testimony in the case was that the car was worth $1,250.00 just prior to the accident and worth $50.00 or $100.00 just after the accident. So therefore the damage to the car would be $1,150.00 or $1,200.00, according to which you find to be the value of the car after the accident—fifty or a hundred.

Bessie was treated by Dr. Mendelsohn and the bill was $10.00 and Dr. Koven, $48.00. The bill of Dr. Mendelsohn for Jennie was $10.00 and her later treatments cost nothing, so she makes no claim for them.

Now, as to Diana, Dr. Mendelsohn charged $565.00; Dr. Koven, $176.00; the hospital bills were $114.00, the nurses at the hospital were $84.-00; the masseuse charged $32.00, and they had a nurse at home for four or five weeks at $45.00 a week; and she had clothing which was destroyed which cost when new $39.50 for the sport coat, $22.50 for the dress—and that is an element of damage, if you can appraise the value of them at that time, because, just like the automobile, the damages that she is entitled to, if any, on that feature, would be the difference between the value just before and just after. If they were brand new, that would be one thing, and if she had worn them a season or two, that is another. I do not know whether I can help you on that, but you will remember what the testimony was. Another item would be the payment of the maid, who was not required, to do the housework in this household before the accident, and was necessary afterwards, at $45.00 a month.

Now, those are the items of expense, as I recall them, and as I jotted them down, I may be wrong and I may not be. I try to be accurate.

In addition to that, of course, they are entitled to these items:

As far as Dorothy is concerned, as I recall it, she was the little girl who was bruised and shaken up, I have forgotten just what, but who required the services of no doctor. All of them are entitled to the sum that you think is proper to compensate them for the pain and suffering which they have undergone and may undergo in the future and for such bodily injury, or injuries, of a permanent or temporary character as they may have received. It is not claimed here that any of them have any permanent disability, except Diana and Reuben.

As to Reuben, his hand is somewhat weakened, because of the cut on the back of his hand, or thumb, which he experiences, when he uses an iron in his business as a ladies' tailor, and the heavy shears; I think he said it was not as bad as it had been, but for some time he was more or less bothered by that.

Outside of that, Diana is the only one that contends for permanent injuries, and she says that she is permanently injured, as counsel has told you, and as you will recall the doctor explained and the reasons for it.

Now, the father, Reuben, is, of course, entitled to a verdict for himself for the amount of damage that I have indicated that he suffered in the loss of his car, or the damage to his car, and the expenses that he was put to to himself only if you find there was no negligence on the part of Bessie. But if you should find that there was contributory negligence on the part of Bessie, then neither Bessie nor he can recover, if you also find that Bessie was driving his car as his agent. But if you find that there was negligence on the part of Mr. Kuiper and also negligence on the part of Bessie, then, as I have said, the others may recover, and in that event and only in that event may Mr. Reuben Peskowitz recover the expense that I have detailed to you with respect to his wife, that is, the doctors' bills for her and the expense that he was put to to effect her cure, and the expenses in the household which he has had and the wife's clothing, etc., because that is his duty to supply, and that he is not barred from receiving, although he might be barred from receiving the value of his own personal injuries.

I hope I have made that clear. It is a little bit complicated, and if I have not made it clear, you

may come back for further instructions. I am trying to make it as clear as I can, but I appreciate it is a little bit complicated. Of course, you are not concerned with this question, if you find for the plaintiffs on the theory that the plaintiffs were guilty of no negligence. The complication is where you find there was contributory negligence which bars Bessie's recovery for pain and suffering and the expense that she was put to, and also the father for his injury and his personal property damage, if he was the principal and she the agent. But if you find that the fault was the driver of the defendant truck, and no fault or negligence on the part of Bessie, then, of course, they are all entitled to a verdict, under the rules of damage as I have indicated to you.

The defendant, Kuiper, if you find against the defendant, is responsible because of his wrong, if you find he was negligent, and his employer is also responsible, because it is responsible for his act, he being their agent and in their employ at the time.

Now, of course, if your verdict be for the plaintiffs, you must bring in a verdict specifying the amounts which each are to receive; and you must also bring in a verdict on the counter-claim, because you must remember that the defendant is also asking money from the plaintiffs, Bessie and Reuben, the driver and the owner of the car. And if your verdict should be for all of the plaintiffs, your verdict must then necessarily be no cause for action on the counter-claim; but if your verdict should be for the children, other than Bessie, and the wife, and no cause for action as against Bessie and Reuben, on the theory that Bessie was guilty of contributory negligence, then your verdict must be, if you find no negligence on the part of Mr.

Kuiper—well, in any event, if you find no negligence on the part of Mr. Kuiper, you must bring in a verdict for the counter-claim. He cannot recover on the counter-claim unless he was without negligence. That is the simpler way of putting it.

This case is a question of fact, and that is why you are deciding it. The court decides all questions of law and the court explains the law to you, governing the case; but you are the sole judges of the questions of fact. The question of fact for you to determine is the responsibility of this accident. Whose fault was it? Was there negligence? Whose negligence was it? Both charge the other with being negligent. And the further fact, if necessary, as to whether Bessie was, in fact, driving as the agent for her father, as I have repeatedly pointed out to you.

Now, the law does not presume negligence, but requires that negligence always be proven, and the burden is cast by the law on the plaintiff to prove negligence, and on the defendant, also, where the defendant claims that the other party was negligent, as here. That means that it must be proven by the clear weight of the testimony. The testimony must predominate, must weigh heavier on that side of the question—not necessarily the number of witnesses but the quality rather than the quantity of the testimony.

You are the sole judges of the weight that the testimony is to receive. You may believe some and disbelieve others. You take into consideration in weighing their stories, the interest that they have in the outcome of this suit, their manner of testifying, whether they were clear, whether they contradicted themselves, whether their stories squared with your knowledge of physics, whether their stories appealed to your intelligence, your common sense;

and in all those ways you give the weight to the story that the witnesses have told, as much or as little as you think it is entitled to. You separate the truth from the untruth. And just because the witnesses do not all agree does not necessarily mean, of course, that anyone is falsifying, because we cannot all agree, if we all look at the same thing, as to details of what we have seen. Particularly is that true when you come to measurements and exact locations and speeds and things of that sort. But if you believe that any witness has appeared here and testified falsely on a material fact for the purpose of deceiving you, you have the right to disregard everything, if you wish, that such a witness may have testified to.

You are, I repeat, the sole judges of the weight that the testimony is to receive, and you are, likewise, the sole judges of what the testimony was. I have tried to summarize it, and I have read you some figures. I might have been mistaken, and if I have been, in any respect, you will disregard anything that I said with respect to the evidence that does not coincide with your recollection of what the testimony was. You must depend on your recollection and not mine.

You may now retire.

The jury retires.

PLAINTIFFS' EXCEPTIONS TO THE CHARGE.

The Court. Mr. Dunn takes exception to my definition of contributory negligence, because I failed to use the words "proximate cause." I tried to say that if the driver of the car was in any way guilty of any act of negligence that contributed to it, and he objects to it because I did not go further and say if that act was the proximate cause of the accident, and so on. He may be right in his objection to my not putting those words in, but I won't bring them back, because it is co complicated that even though he is right and I am wrong, it will only further complicate matters.

Mr. Dunn. Your Honor will allow me an exception to that.

I also except to that part of your Honor's charge wherein you charge that there can be no recovery for Bessie if she contributed in any way to the happening of this accident, even though there was negligence on the part of the defendant Kuiper.

And to that portion of his Honor's charge wherein you charge that in any way where any act of hers in any way contributed there can be no recovery for Bessie or Reuben, if you find that she was acting for him, meaning Reuben.

To that part of your Honor's charge wherein you charge that negligence can be imputed only to Bessie and Reuben then there can be recovery only for Diana, Jennie and Dorothy.

To that part of your Honor's charge wherein you charge that Bessie and Reuben cannot recover, if Bessie is negligent in any way, and wherein you continue to say, and only in that event can Reuben recover the expense of the household.

To that part of your Honor's charge wherein you

charge that only if there be no fault or negligence on the part of Bessie, then they may recover.

Then, to that part of Your Honor's charge wherein you charge if you find there was no negligence on the part of Mr. Kuiper, then you must bring in a verdict on the counter-claim.

To Your Honor's failure to charge the several requests to charge submitted, and in Your Honor's failure to charge in the specific language or in substance the requests to charge submitted on behalf of the plaintiffs.

Mr Werksman. I desire to take exception to that part of Your Honor's charge wherein you say that Riley did not corroborate Bessie Peskowitz and Reuben Peskowitz as to the stopping of the Peskowitz' car, whereas, in fact, Riley did corroborate both as to the stopping of the car.

Also to that part of Your Honor's charge wherein you said that Riley testified as to the blowing of the horn but did not know whose horn was blown the testimony being that Riley did say that the blowing of the horn could have come from the Peskowitz' car.

Also to that portion of Your Honor's charge wherein you say that Simon Shapiro is not a party plaintiff, whereas the pleadings show that he is a party plaintiff, suing for the injuries sustained by his wife.

Also to that part of Your Honor's charge wherein you say that the plaintiff passengers may recover only if you believe that both were negligent. The Court should have said must recover, if there be negligence on the part of both the defendant's driver and the driver of the plaintiffs' car.

DEFENDANTS' EXCEPTIONS TO THE CHARGE.

Mr. Chance. First, I record now, the exception which I made to the ruling of the court, as I was summing up the case, to the effect that the husband's negligence would not bar his wife.

I also except to the ruling of the court made as I was summing up, to the effect that the law as laid down in *Goodenough* vs. *Penna. Railroad Company*, in 55 N. J. Law, has been superceded by subsequent statutes.

I except to the limitation of the scope of the summation as made by the rulings at that time.

I except to the refusal of the court to charge the second request to charge, as submitted by the defendant.

I except to the refusal of the court to charge the third request to charge, as submitted by the defendant.

I except to the refusal of the court to charge the fourth request to charge, as submitted by the defendant.

I except to that part of the court's charge wherein the effect of negligence on the part of Bessie Peskowitz was defined.

I except to the statement of the court, in substance, to the effect that if Bessie Peskowitz was negligent, that fact would not bar a recovery by Diana Peskowitz, even if Bessie were acting as the agent for Reuben Peskowitz.

I except to the part of the court's charge wherein the question of whether Bessie was acting as the agent of Reuben Peskowitz was submitted to the jury, the basis of this objection and exception being that the evidence is so clear and undisputed that she was the agent that there was no jury question on that subject.

I except to that part of the court's charge wherein it was said, as nearly as I can recall, in substance, all of them are entitled to compensation for able to Reuben Peskowitz, he could still recover for the expenses incident to his wife's injuries.

I except to that part of the court's charge wherein the court, speaking of damages, says, in substance, all of them are entitled to compensation for pain and suffering and injury in that, at that place, the court's charge assumed liability and omitted to indicate that negligence on the part of defendant's driver must appear before such compensation is proper, and while the court charged the proper rule at another place, I do not think the error at this place is cured.

I except to that part of the court's charge wherein, speaking of the *effect* of Bessie Peskowitz' negligence, if any, the court did not limit the right of Diana Peskowitz to recover to the case where Kuiper, the driver of the Kramer truck, was negligent, the language of the court, in substance, being that there must be a recovery for Diana, even though Bessie were negligent.

(*Stenographic Note.* During the course of dictation of exceptions by Mr. Chance, one of counsel for the plaintiffs stated they waived the neglect of the court to charge with regard to the case of Simon Shapiro.--DYE.)

PLAINTIFFS' REQUESTS TO CHARGE.

1. Under Chapter 223, Laws of 1925: "Every driver of a vehicle approaching the intersection of a street or public road shall grant the right-of-way at such intersection to any vehicle approaching from his right."

2. If the plaintiff, passengers was invited to ride in the car of the plaintiff, they were his guest, and if the driver of the defendant's truck was negligent, they are entitled to damages against the defendant, even if the driver of the car in which they rode contributed by his negligence to the collision, provided she herself was free from negligence which contributed to the happening of the accident.

3. If you find that the plaintiff, Reuben Peskowitz, who invited the plaintiff passengers to ride in his car was guilty of contributory negligence, she nevertheless, can recover against the defendant, if you find that the defendant by his negligence caused the accident and that she was free from any negligence which contributed to the happening of the accident.

(Signed) IRVING L. WERKSMAN.

DEFENDANTS' REQUESTS TO CHARGE

1. Negligence (if any) on the part of the driver of the car in which plaintiffs rode is imputable to her father, Rubin Peskowitz.

2. Contributory negligence on the part of Rubin Peskowitz would bar recovery by both him and Diana Peskowitz, his wife.

3. If Bessie Peskowitz was operating the automobile of Ruben Peskowitz as his agent, and was guilty of negligence contributing to the accident, neither she, nor Ruben Peskowitz, nor Diana Peskowitz in entitled to a verdict in this case.

4. Contributory negligence on the part of Bessie Peskowitz would prevent the recovery of a verdict in her favor.

(Signed) KELLOGG & CHANCE.

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New Jersey Court of Errors and Appeals

DIANA PESKOWITZ and RUBEN PESKOWITZ, her husband, and RUBEN PESKOWITZ, individually, JENNIE SHAPIRO and SIMON SHAPIRO, her husband, BESSIE PESKOWITZ and DOROTHY PESKOWITZ, by her next friend, RUBEN PESKOWITZ, and RUBEN PESKOWITZ, individually, *Plaintiffs-Respondents,* *vs.* LAWRENCE F. KRAMER, INC., and JACOBUS KUIPER, *Defendants-Appellants.*	*Action at Law.* *On Appeal from Passaic Circuit Court.*

BRIEF OF DEFENDANTS-APPELLANTS.

This action was brought to recover damages for personal injuries received by all the plaintiffs, and property damage to the automobile of plaintiff Ruben Peskowitz by a collision with an auto truck of the defendant Lawrence F. Kramer, Inc., driven by the defendant Jacobus Kuiper. That some injury and damage were shown cannot be denied.

There was a counterclaim on behalf of the defendant Lawrence F. Kramer, Inc., against Ruben Peskowitz the owner of the automobile in which all the plaintiffs rode, and against his daughter Bessie Peskowitz the plaintiff who was driving the Peskowitz car. (Case, p. 17.)

The collision took place in Paterson as the plaintiffs, the Peskowitz family, were returning to Passaic from a week-end excursion in New York State

(page 125). The plaintiffs are all members of the family of Ruben Peskowitz the owner of the car in which they rode. Diana Peskowitz is his wife. Bessie and Dorothy Peskowitz are daughters, as is Jennie Shapiro. Simon Shapiro is his son-in-law.

THE VERDICT

The verdict is no cause of action as to all plaintiffs, except Diana Peskowitz who is awarded $5,000, and no cause of action on the counterclaim (Case, page 23).

One necessary implication of this verdict is that the jury found the defendants guilty of negligence, as otherwise there would have been no basis for making an award to the plaintiff Diana Peskowitz. It is another necessary implication that the jury found Ruben Peskowitz, the husband of Diana, guilty of contributory negligence as otherwise the jury would have been required to give a verdict in his favor for her personal injuries, his property damage, and for the loss of his wife's services. The verdict also means that the other plaintiffs not directly concerned in this appeal were likewise guilty of negligence contributing to the accident or they would have been entitled to recover.

GROUNDS OF APPEAL

The defendants-appellants, Lawrence F. Kramer, Inc., and Jacob Kuiper, state the following grounds of appeal in this cause.

1. The trial judge erred in refusing to charge the second request to charge as submitted by the defendant, which was as follows: "Contributory negligence on the part of Ruben Peskowitz would bar recovery by both him and Diana Peskowitz, his wife," to which refusal exception was duly taken and noted.

2. The trial court erred in refusing to charge

the defendants' third request to charge which was as follows: "If Bessie Peskowitz was operating the automobile of Ruben Peskowitz as his agent and was guilty of negligence contributing to the accident, neither she, nor Ruben Peskowitz, nor Diana Peskowitz, are entitled to a verdict in this case," to which exception was duly taken and noted.

3. The trial judge erred in the charge to the jury —erroneously charged the jury as to the effect of negligence on the part of Bessie Peskowitz, the language of the court in this regard being: "and if you find that there was negligence on the part of the driver of that car, that will bar the recovery of Ruben, the father, under the circumstances that I have cited, if you find the fact to be that she was driving it for him as his agent, but, as I have stated, it will not bar the recovery of the mother Diana, nor Dorothy nor Jennie Shapiro, because any negligence of the driver cannot be imputed to other people, other than the persons for whom she was acting. In other words Mrs. Peskowitz and the other children and the other occupants, were invited guests, I think, under the testimony and under these circumstances any negligence of the driver of the car in which they are guests is not their negligence and cannot be imputed to them, so that if you find negligence on the part of the defendant Kuiper, no matter how you find as to Bessie, as to her negligence, there must be a recovery for Diana, Dorothy and Jennie Shapiro," and "But if you find that there was negligence on the part of Mr. Kuiper, and also negligence on the part of Bessie, then, as I have said, the others may recover," to which portion of the court's charge exception was duly taken and noted.

4. The trial judge erred in that part of his charge wherein speaking of damages he said as follows: "All of them are entitled to the sum you

think is proper to compensate them for the pain and suffering which they have undergone and may undergo in the future and for such bodily injury, or injuries, of a permanent or temporary character as they may have received," in that, at that place the court's charge assumed liability and omitted to indicate that negligence on the part of the defendant's driver must appear before such compensation is proper, to which portion of the Court's charge exception was duly taken and noted.

5. The trial court erred in his charge to the jury wherein speaking of the effect of Bessie Peskowitz's negligence, if any, the court in substance said that there must be a recovery for Diana even though Bessie were negligent, if they found that Kuiper, the driver of the Kramer truck, was negligent, to which portion of the court's charge exception was duly taken and noted.

6. The trial court erred in charging the jury in substance that it was for them to find whether Bessie was acting as the agent of Ruben Peskowitz at the time of the accident, the basis of this objection being that the evidence is so clear and undisputed that she was the agent that there was no jury question on that subject, to which portion of the court's charge exception was duly taken and noted.

7. The trial judge erroneously ruled to the effect that the husband's negligence would not bar his wife and that the law as laid down in the case of Goodenough *vs.* P. R. R. Co., in 55 N. J. L., has been superseded by subsequent statutes to which ruling exception was duly taken and noted. (Case, page 26, et seq.)

These grounds of appeal, particularly the first, second, third, fifth and seventh, raise the question as to the effect of contributory negligence of the husband Ruben Peskowitz and the daughter Bessie

Peskowitz who drove the car upon the action of the wife Diana Peskowitz. The trial judge's charge and his refusal to charge manifestly embody rulings that the wife's claim would not be affected by the contributory negligence of Ruben or Bessie Peskowitz, in which ruling the trial court erred.

DEFENDANTS'-APPELLANTS' POINTS

I. THE TRIAL COURT ERRED IN REFUSING PROPER REQUESTS TO CHARGE.

II. THE TRIAL COURT ERRED IN THE CHARGE AS DELIVERED.

III. THE TRIAL COURT ERRED IN RULING TO THE EFFECT THAT THE LAW AS LAID DOWN IN P. R. R. Co. *vs.* Goodenough, 55 N. J. L., 577, HAS BEEN SUPERSEDED BY SUBSEQUENT STATUTES AND THAT THE HUSBAND'S NEGLIGENCE WOULD NOT BAR HIS WIFE.

ARGUMENT

POINTS I, II and III, argued together.

The errors alleged in these points appear in the foregoing grounds of appeal. These points will be argued together as they all involve the following propositions:

1. The common law rule that the husband's contributory negligence is a complete defense to a negligence action for personal injuries to the wife has not been superseded in New Jersey by statute; and

2. The legislation allowing a married woman to sue in certain cases without joining her husband, being permissive (not mandatory) is waived where the wife joins the husband as plaintiff instead of suing alone.

The first of the foregoing propositions was true in June Term, 1893, when this court decided the case of P. R. R. Co. *vs.* Goodenough, 55 N. J. L., 577. That was then the law for two reasons, *first* by reason of the unity between husband and wife at common law, and *second* because of the control over her actions and the interest therein which the common law allowed the husband. The first of the foregoing reasons, the unity between husband and wife still exists. Subsequent legislation relates to the second reason only, leaving the unity feature of the marital relationship such that his negligence is hers and bars a recovery.

THERE WAS A COMMON LAW UNITY OF HUSBAND AND WIFE.

Blackstone discusses this common law unity between husband and wife as follows:

> "By marriage, the husband and wife are one person in law, that is, the very being or legal existence of the wife is suspended during the marriage, or at least is incorporated, and consolidated into that of the husband." * * *
> 1 Bl. Com., page 442.

See brief of plaintiff in error in 55 N. J. L., at page 577; also Alpaugh *vs.* Wilson (June, 1894, Term Err. & App.), 52 N. J. Eq. 589, affg. 52 N. J. Eq. 424, where it is said of husband and wife:

> "I think that it is not seriously disputed but that under the common law—in legal contemplation they were one. Nor has it been successfully maintained that this unity has been severed by implication under any acts of the legislature respecting married women. Such acts being in derogation of the common law, all courts have persisted in a strict construction of them."

MODERN ILLUSTRATIONS SHOW THE PERSISTENCE OF THE UNITY OF HUSBAND AND WIFE.

So much does this common law unity between husband and wife persist that a wife cannot buy where her husband sells as trustee, because of that unity, Bassett *vs.* Shoemaker, 46 N. J. Eq., 538; a wife cannot purchase a periodical from a corporation in which her husband is an officer for the same reason, National Manufacturers Co. *vs.* Bird, 97 N. J. Eq., 242; a wife cannot sue her husband in tort Von Lazewski *vs.* Von Lazewski, 4 N. J. Adv. Rep., 797, while the husband is still liable for his wife's assaults, Majowicz *vs.* Magda, 2 Misc., 61, and for her torts which do not grow out of her sole and separate business and the management of her separate property. Sargeant *vs.* Fedor, 130 Atl., 207.

A COMMON FAMILY UNDERTAKING WAS INVOLVED IN THIS CASE MAKING SPECIAL REASON FOR RECOGNIZING UNITY OF HUSBAND AND WIFE.

In this particular case the evidence shows that at the time of the accident the husband and wife were returning from a family week-end excursion. It was a common enterprise, family recreation, in which they were engaged.

What in substance is meant by the unity of husband and wife? It surely includes the idea that they are engaged in a common undertaking of having a home, and raising and caring for children. This is not a case where the wife has been given separate property, which property has not been employed in the common undertaking, and which under the modern statute law she is entitled to handle as her own, free from her husband's control. This

is a case in which both parties to the marriage were acting in the joint undertaking, or as the old law considers it under the unity of married life. They were engaged in furnishing health and recreation to their own children by taking them on a week-end trip to the mountains. They were returning from this common undertaking at the time of the accident. In this venture Mrs. Peskowitz was more than "an invited guest"; she had a vital concern and interest. It is absolutely clear that the parents were both engaged in the undertaking. When they selected and allowed one of the children to drive the automobile, it is peculiar to say that that child was the agent of the father and not of the mother.

The verdict recognized that the child who was driving was the agent of the father, but refused to recognize that she was at the same time the agent of the mother. Thus in effect, the unity of marriage was denied, as was the fact, that when father and mother are engaged in taking their own children to or from the country for the purpose of health and recreation, they are engaged in a common matrimonial enterprise. That is error.

RECENT PERTINENT LEGISLATION TOUCHES REMEDIES ONLY—DOES NOT CREATE RIGHTS NOR DESTROY MARITAL UNITY EXCEPT IN CONTROL OF LAW ACTIONS.

A careful reading of the legislation since P. R. R. *vs.* Goodenough, shows that it does not destroy the effect of the marital unity in so far as the husband's negligence in a case like this, is concerned. These statutes merely regulate matters of procedure. They do not undertake to destroy the unity of husband and wife by virtue of which his contributory negligence precludes the existence of any right of action to be enforced. Appellants' question is not

that of procedure or adjective law as to whether Mrs. Peskowitz could sue alone or must be joined by her husband. It is the question of substantive law, whether there is any right of action for anybody to enforce by action, in view of her husband's contributory negligence. This latter question must be answered in the negative when the subsequent legislation is considered.

Since the case of P. R. R. Co. *vs.* Goodenough, there has been enacted, P. L. 1906, page 525, amended by P. L. 1909, page 210. As amended it appears in Comp. Stat. page 3236, section 12a and 12b as follows:

> "12a. Action in tort by married woman without joining husband.
>
> "Sec. 1. Any married woman may maintain an action in her own name without joining her husband therein for all torts committed against her, or her separate property, in the same manner as she lawfully might if a feme sole; provided, however, that the husband of such married woman may join in such action his claim for any damages he may have sustained in connection with or growing out of the injury for which his wife brings her action, but his failure to join shall not prevent his right to maintain a separate action therefor; provided further, that this act shall not be so construed as to interfere with or take away any right of action at law or in equity now provided for the torts above mentioned.
>
> "12b. Action in tort may be prosecuted separately by married woman.
>
> "Sec. 2. Any action brought in accordance with the provisions of this act may be prosecuted by such married woman separately in her own name, and the non-joinder of her husband shall not be pleaded in any such action."

There is also P. L. 1912, page 416 (Supp. Comp. Stat. 1838), as follows:

> "124-17. Women in law. 1. A married woman may sue, or be sued, without joining her husband, in any case whatsoever in which he would be an unnecessary party if he were not her husband."

The titles of these acts limit their scope.

The 1906 act, page 525, is entitled, "An act for the protection and enforcement of the rights of married women," and the 1909 law, page 210, makes an amendment of the 1906 act. In Tobiassen *vs.* Polley, 96 N. J. L., page 66, there is a statement at page 69 "the act of 1906 provides no new cause of action." This statement is justified, for neither by the title nor body of the act is there any indication that the legislature created, established or instituted any right of action. It merely spoke of the protection and enforcement of existing rights. That it creates no new rights—imposes no new liabilities, is also the ruling of Sims *vs.* Sims, 77 N. J. L., 251. The reversal by this court, 79 N. J. L., 577, does not rule to the contrary. The reversal is upon the theory that alienation of a husband's affection was an injury at common law, and that the 1906 act merely gave a remedy for enforcing that imperfect existing right. In other words, defendant's obligation did not spring from the 1906 statute; only the plaintiff's remedy did (see Stark *vs.* Fagan, 89 N. J. L., pages 29, 30).

The 1912 statute is entitled "An act respecting actions by or against married women." Clearly this title and the statute contains no indication of the creation of any new right and does not destroy the unity arising from the marital relation. It merely involves joinder of parties and enables a married woman to sue without joining her husband in the action.

In none of these statutes is any intention indicated to deprive the unity between husband and wife of its effect of causing his contributory negligence to be hers and to prevent the arising of any cause of action to be enforced by an action at law.

If it be suggested that this argument is opposed by Stevens *vs.* Schmidt, 80 N. J. L., 193, to the effect that a husband cannot release the wife's claim for tort, because the 1906 law placed the enforcement of her rights outside his power, the answer is, that decision only relates to a case where the wife had some right to be released. The decision does not show that she has any substantive right given her by that statute, and does not say that the rule of the common law that the husband and wife are to be regarded as one person, was abrogated in so far as the same caused his contributory negligence to be her negligence so she has no right either to enforce or release. In fact contributory negligence of a husband was not discussed.

In considering these statutes since P. R. R. Co. *vs.* Goodenough the rule of construction to be kept in mind is expressed in Alpaugh *vs.* Wilson, 52 N. J. Eq., 424, at 525 (affirmed by the Court of Errors and Appeals at page 589).

> "Such acts being in derogation of the common law, all courts have persisted in a strict construction of them."

Accordingly construing these statutes strictly as relating only to remedies, that is actions, and to the question of who shall be joined as parties and who can control the prosecution and defense of actions, and to no other extent abrogating the common law merger of the wife's being or legal existence in that of her husband, it is apparent that the statutes do not change the law stated in P. R. R. Co. *vs.* Goodenough that contributory negligence of

the husband will defeat a suit for personal injury to the wife.

It may be noted that paragraph 11 of the Practice Act discussed in the Goodenough case in present form is in Comp. Stat., page 3235, and Comp. Stat. Supp., page 1835. Section 22 discussed in the Goodenough case, in present form, is section 21 in Comp. Stat., page 4057. Section 24 discussed in the Goodenough case became section 23 in the Comp. Stat., page 4058, but was repealed in 1912, page 384.

OTHER CASES CONSIDERED AND EXPLAINED

It is useless to consider the decisions of other states, because they are based upon statutes which differ in detail from the New Jersey acts. The only cases which deserve any consideration are Van Clik *vs.* Hackensack Water Co., 126 Atl., 634, and Horandt *vs.* Central R. R., 78 N. J. L., 190, 81 N. J. L., 488.

The first mentioned was a Supreme Court case brought under the death act by the husband as personal representative. The question before the court seemed to be whether a person suing in a representative capacity should be charged with his individual defaults. That the effect of the unity between husband and wife as making his negligence hers was not brought out is indicated by the fact that the decision is based entirely on the case of Con. Traction Co. *vs.* Hone, 59 N. J. L., 275, and a statement that the Supreme Court agreed with the reasoning in the last named case. A reference to Con. Traction Co. *vs.* Hone shows that it was one in which Hone sued as personal representative of his son. Obviously in that case no question could arise concerning the common law rule that the husband and wife are to be regarded as one person, nor as to the effect of the husband's contributory

negligence barring an action for injury to her because of their unity. In the case at bar there is no question about charging a person suing in a representative capacity with his individual defaults. Both husband and wife are alive and plaintiffs. We respectfully submit that Van Clik *vs.* Hackensack Water Co. should not be deemed by this court as authority for any other point than that a personal representative is not to be charged with his individual negligence. Certainly the authority it cites, Con. Traction Co. *vs.* Hone, involving the rights of a father suing as personal representative of his son has no bearing on whether the marital relationship and the unity between husband and wife make his contributory negligence a bar to an action for her injuries.

The other case Horandt *vs.* C. R. R. of N. J., 78 N. J. L., 190, and 81 N. J. L., 488, concerns four suits growing out of a collision between an automobile owned and driven by the deceased Christopher Horandt and a railroad train. The first report was on rule to show cause, and the second on writ of error. In the first the Supreme Court opinion said:

> "With regard particularly to Mrs. Horandt, it may be remarked that her case is not controlled by the decision in *P. R. R.* vs. *Goodenough,* 26 Vr., 577, in which it was held that in actions by husband and wife for a tort to the wife his contributory negligence would defeat the suit *because of his common law interest in and control* of the recovery." (Ital. ours.)
>
> "The present case differs in that there is no husband to exercise any such control, he having perished in the accident and as a result the right of action enures to the wife alone."

In the Court of Errors report the wife's and the

other two passenger cases were discussed as follows:

> "With respect to the other three cases we reach a different result. These plaintiffs were passengers in the automobile, and, consequently as pointed out in the Supreme Court opinion, not chargeable with the contributory negligence of the driver."

Nothing else is said on this subject so it would seem the effect of the relationship of husband and wife was not raised, except as it touched control over law suits. The merger of the wife with her husband was not discussed.

It is true that P. R. R. *vs.* Goodenough held that because of his common law interest in and control of the recovery, a husband's negligence barred the action, but that decision does not deny the soundness of the first point of plaintiff in error in that case, that the marital relationship, the unity of husband and wife, was a sufficient reason for the common law rule. However, if the proper construction of P. R. R. *vs.* Goodenough is that the court passed the question of this effect of the unity between husband and wife, we now raise the point that the husband and wife are still so much a unity, that if the husband is negligent, his contributory negligence is that of the other part of the unity, the wife (in this case, Diana Peskowitz).

In Drew *vs.* Kreger, 98 N. J. L., 150, the court said it was not called upon to decide the effect of the husband's concurring negligence as in P. R. R. *vs.* Goodenough, and we have found no decision which holds that cause of action arises, to be enforced by anybody, where there is concurring negligence of the husband and a third party.

JOINDER IN THIS CASE OF HUSBAND AND WIFE AS PLAINTIFFS WAIVED ANY BENEFIT FROM THE PERMISSIVE STATUTES WHICH ENABLE A WIFE TO SUE ALONE.

As noted at the head of the argument the second proposition advanced by appellants is:

> The pertinent legislation allowing a married woman to sue in certain cases without joining her husband, being permissive (not mandatory) is waived when the wife joins the husband as plaintiff, instead of suing alone.

The mention heretofore made of the statutes relating to married women's actions at law has been based upon the assumption that their full force should be considered applicable here. Really we maintain they have no application to this case. All of these statutes merely say that a wife "may" sue separately. This is not mandatory, it is merely permissive. In fact Dravis *vs.* Public Service Corp., 77 N. J. L., 275, so construed one of these statutes. Of course the benefit of a permissive statute can be waived. It was done in this case when the husband and wife joined as plaintiffs. Having thus by such joinder as plaintiff, waived the benefit and declined the permission to sue alone, this action is not governed by the unaccepted, permissive statutes, but by the former rules concerning actions by husband and wife.

It may be noted that Bristol *vs.* Skerry, 64 N. J. Eq., 624, at 629, took similar view by saying that Section 11 of the Married Women Act

> "is, however, a mere enabling act. She is empowered, but not required, to sue in her own name, without making her husband a party. If she sues without him she may do so in her own name, as sole complainant, under

the power given her by Section 11. If she desires to make him a party she must follow the practice established by the modes of procedure in such cases before the enactment of section 11 * * * ”

There is no good reason for applying a different rule to the later statutes. Consequently when this married woman plaintiff, Diana Peskowitz, instead of accepting the permission given by the statute to sue alone, joined with her husband, she waived the enabling statute. So her action is under the old practice, with its element of control by the husband, and that reason of P. R. R. *vs.* Goodenough applies fully to this case.

CONCLUSION

To recapitulate the principal preceding arguments, we maintain,

THE HUSBAND'S CONTRIBUTORY NEGLIGENCE CONCURRING WITH THAT OF ANOTHER PARTY, BARS ACTION AGAINST THAT OTHER PARTY FOR WIFE'S PERSONAL INJURY, because:

I. The common law rule creating unity between husband and wife and making his negligence hers so no cause of action arises—applies in this case, because

1. Cases show that unity persists except as modified by statute; and,

2. Recent pertinent legislation as to married women only relates to joinder of parties and actions (remedies), but does not create any new cause of action.

3. No New Jersey decisions deny that common law unity makes his negligence hers so no cause of action arises. Cases since *P. R. R.*

vs. *Goodenough* merely touch question of continuance of husband's control over wife's actions at law.

4. A joint family undertaking was involved; and

II. The common law control of husband over wife's action and his interest therein constituting a bar, applies in this case, because,

1. Recent legislation that wife may sue alone, being permissive, was waived in this case by the joinder of husband and wife as plaintiffs.

For the foregoing reasons THE JUDGMENT IN FAVOR OF MRS. PESKOWITZ SHOULD BE REVERSED.

Respectfully submitted,

KELLOGG & CHANCE,
Attorneys for and of Counsel with Defendants-Appellants.

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New Jersey Court of Errors and Appeals

DIANA PESKOWITZ and RUBEN PESKOWITZ (her husband) and RUBEN PESKOWITZ, Individually, JENNIE SHAPIRO and SIMON SHAPIRO (her husband) BESSIE PESKOWITZ and DOROTHY PESKOWITZ, by her next friend RUBEN PESKOWITZ, and RUBEN PESKOWITZ, Individually, Plaintiffs-Respondents, vs. LAWRENCE F. KRAMER, INC., a corporation of New Jersey and JACOBUS KUIPER, Defendants-Appellants.	Action at Law. On Appeal from Passaic Circuit Court.

BRIEF OF PLAINTIFFS-RESPONDENTS.

The gravaman of the complaint lodged in the Passaic Circuit Court in behalf of the plaintiffs against the defendants was that:

Defendant through its agent Jacobus Kuiper was negligent in the operation of its automobile, thereby causing serious injuries to the plaintiffs, all the injured persons, who were then occupants in the respondents' automobile, joined as parties plaintiff, and the jury rendered a verdict in favor of Diana Peskowitz, wife of the owner of the au-

tomobile, and no cause of action as against the remaining plaintiffs. The jury further found no cause of action against the appellants on the counterclaim filed.

RESPONDENTS' POINTS.

1. The Court did not err in its charge to the jury.

2. The Court did not err in holding that the case of Goodenough vs. P. R. R. 55 L. 577 was not controlling of the issues in the case.

3. The Court did not err in charging that the negligence of Ruben Peskowitz, if any, could not be imputed to Diana Peskowitz, a passenger in the car.

4. The defendant-appellants failed to set forth in the answer filed, any statement concerning the respondent Diana Peskowitz being chargeable with the negligence of Ruben Peskowitz.

5. That the answer failed to disclose or set-up that Diana Peskowitz was barred from maintaining this suit by reason of any common law impediment relating to husband and wife.

6. That the appellant failed to move for a nonsuit, thereby admitting respondents' cause of action.

7. That the appellant failed to move for a direct verdict at the close of the entire case.

Argument.

1. The fact that the jury found against the remaining plaintiffs does not *per se* mean that the remaining plaintiffs were not entitled to recover in this action. It may well be that the injuries sustained by them as shown by the State of the Case were not of a serious character. The fact that the remaining plaintiffs were not awarded damages brought no injury to the appellant; the injury was to the respondents.

2. The appellant addresses his argument primarily to the first point to wit: that the Court erred in its charge to the jury when it said, "The negligence of the driver of the car could not be imputed to Diana Peskowitz." The case of Goodenough vs. P. R. R. *supra* is not despositive of the issues confronting this Court. In the case *supra,* as I understand it, the wife could not maintain her action alone without joining her husband and because of that impediment, the Court held that the husband's negligence was to be imputed to the wife. The husband today is not so closely identified with the rights of the wife, so as to be a part and parcel of her rights and remedies, given to her by statute. The illustrations and cases cited in the Goodenough case are not applicable to the situation today. His power over the action and the effect of his conduct upon the result are not of any importance today, as instanced by a case where a husband executed a release and included his wife therein, and the Court held that this release did not bar the wife from maintaining an action for the injuries that she sustained in the accident.

3. If the reasoning laid down by the case *supra* is not applicable by reason of the change in Legis-

lation, then certainly this Honorable Court should overrule the former case.

4. The resaon at the common law for the joinder of the husband was because of the legal interest that he had in the outcome of the suit, and the inhibition against the wife in maintaining a suit in her own name. The common law formerly did not permit a woman to maintain a suit for alienation of affection. In Sims vs. Sims, 76 Atl., p. 1063, Justice Minturn speaking for the Court of Errors and Appeals, referring to the Act of 1906 said, "That this Act was intended to confer the power of a married woman to protect and insure her rights is the specified acknowledgment contended in its title. The body of the Act declares that she may maintain an action as a *feme sole* might lawfully do and without joining her husband lawfully therein for all torts committed against her and her property, keeping in mind the old law and the existing mischief. It becomes manifest that the Legislative intentions which inspired this immediate measure could have been only a desire to confer upon a married woman that quality of remedy as an independent suit or which would enable her to effectuate her right in *personem* for a tort committed against her and thus remedy the inequality to which she was subjected by the common law. If therefore as it must be conceded, the Legislature having granted the right to her to maintain an action independent of her husband, then in justice, logic and sense, her husband ought not to be permitted to defeat her independent action by any wrong of his own. Each and every statute relating to married women has had for its purpose the placing of her status on an equal footing with that of man, if then, the wife

be barred from maintaining an action by reason of the husband's negligence, this would be an act backward and nullifying the intention of the several enactments in her behalf. The Courts have been liberal in construing the remedial statutes as regards the wife, and the rule regarding a strict construction of the statute when in derogation of the common law, does not apply to the statutes now under consideration."

5. The rule of law as contended for by the appellant cannot be held to be the rule of today. In the case of Van Clik vs. Hackensack Water Co., 126 Atl. p. 634, Horandt vs. Central R. R. 78 L. 190. In the Van Clik case the Court permitted a recovery in favor of the husband for the death of his wife where he was the driver of the automobile, and it was there argued, as here, that the defendant, by his negligent conduct created the cause of action and should not therefore be permitted to reap in such case the benefit of his own wrongful act. This reasoning was repudiated by the above case, and if it be true that the husband's negligence in the Van Clik case did not defeat the cause of action of a wife, why then should it bar a recovery by the wife in this case, for in principle, there can be no legal distinction, and the fact that the person died, does not alter the rule.

6. The reasoning of Chief Justice Beasley in Consolidated Traction Co. vs. Hone, 35 Atl. p. 899 is pertinent to the issues here. He said, "But it is to be remembered that the legal doctrine that bars a party injured by the unintentional misconduct of another by reason of his having himself been in a measure, the occasion of the resulting damage, is rather an artificial rule of the law than a principle of justice, for its effect generally is to

cast the entire loss ensuing from the joint fault upon one of the culpable parties, and oftentimes upon him who is but little to blame. Such a legal regulation has no claim to extension and to apply it as is now insisted on would be to use it in a novel way."

7. Would it not therefore be a harsh and severe rule to now hold, that the wife in this case, who had no control of any kind or with the automobile was to be denied the right of action by reason of the tortuous conduct on the part of some third person?

8. It is also important in this case that the automobile of the respondent was not driven by the husband, but as it appears in the case was driven by the daughter, who desired to relieve her father from the strain of having driven several hours. This of itself, I contend would be a distinguishing feature that should warrant this Court in upholding verdict. The theory that the husband would enjoy the benefits of his own misconduct or receive monies by reason of his own negligence does not hold in this case, because of the wife's independent cause of action given to her by the statute.

9. The appellant I do not believe seriously contends that the Goodenough case decides that by reason of unity between husband and wife, that no action can be maintained by the wife where the husband is guilty of negligence, for on page 14 of the appellant's brief, they argue, "It is true that P. R. R. vs. Goodenough held that because of his common law interest in and control of the recovery, a husband's negligence barred the action, but that decision does not deny the soundness of the first point of plaintiff-in-error in that case, that the marital relationship, the unity of hus-

band and wife was a sufficient reason for the common law rule. However, if the proper construction of P. R. R. vs. Goodenough is that the court passed the question of this effect of the unity between husband and wife, we now raise the point that the husband and wife are still so much a unity, that if the husband is negligent, his contributory negligence is that of the other part of the unity, the wife. "It is therefore urged for this Honorable Court's determination that every restriction placed upon the wife at common law should hold good today. The Court of Pennsylvania, Senft vs. Western Maryland R. R. Co., 92 Atl. p. 553, held that the wife's cause of action would not be barred by the husband's negligence. That every right given to her by statute in this enlightened age be repealed and nullified. This argument certainly is not supported by the decisions of the Courts by the status of our several jurisdictions and in the light of public opinion. Cases dealing with the severalty of the remedy conferred upon the wife by statute have no application to the suit here. The appellant by this argument holds that if the wife had sued alone she might have recovered even though the relationship of husband and wife were present. The statute permits the joinder of all parties plaintiff against the defendant where the cause of action arose as in this case in the one accident, in fact the Courts encourage that all actions be determined at one and the same time where the same may be done in justice and without any serious discomfort or inconvenience to the defendant, this all to prevent multiplicity of suits. Each and every ground in the complaint is a separate and distinct cause of action, so that in this case, while all of the plaintiffs joined in the one suit, it may well be said that they were each

separate and distinct causes of action, one having no bearing on the other, each having its separate merits. If a separate and distinct cause of action were instituted by each of the plaintiffs in this case, the defendant might well have made application that they all be tried at the one time in accordance with the practice act and his motion would undoubtedly prevail.

10. Having done what the Practice Act encourages and commands, it is with poor grace indeed that the appellant argues that the Goodenough case applies because of this situation.

11. The appellant failed to set up affirmatively in his answer the fact that the wife could not maintain the suit by reason of the unity between husband and wife. Nowhere in the pleading is it alleged, or set up the question now raised by the appellant, to wit: The denial of the wife's action by reason of the unity of husband and wife, or the want of a remedy in permitting her to maintain the action. I contend therefore that this question not having been raised in the answer, the appellant cannot be heard to complain about it at this time. No motion was made for a non-suit on the grounds now urged by the appellant. The appellant cannot be heard to complain now because at the close of the plaintiff's case when all that the appellant contends for now was then evident. Certainly it was incumbent on the appellant on the non-suit pending to have addressed the motion of the Court and setting forth the reason upon which the non-suit should have been granted. Therefore assuming, but not admitting that the appellant is right in his contention with reference to the unity of husband and wife, yet the fact that this point was not raised would bar his right to argue it now.

Motion for direction of a verdict was not made by appellant. Even beyond the pleadings in the cause beyond the motion for a non-suit and at the close of both the plaintiff and defendant's case at nisi prius the appellant again did not move for a direction of a verdict in favor of the defendant. It therefore seems to be the practice now existing in our State that the appellant waived his right to be heard, the appellant is legally bound to address his motion to the Court of the points now under discussion. Having failed in this, he must fail in his contention.

Conclusion.

I respectfully submit that the cause of action ought to be upheld for the reasons stated in the argument and that the points for quoting the verdict are clearly established.

1. The Court did not err in its charge to the jury.

2. The Court did not err in holding that the case of Goodenough vs. P. R. R. 55 Law 577 was not controlling of the issues in the case.

3. The Court did not err in charging that the negligence of Ruben Peskowitz, if any could not be imputed to Diana Peskowitz, a passenger in the car.

4. The defendant-appellants failed to set forth in the answer filed, any statement concerning the respondent Diana Peskowitz being chargeable with the negligence of Ruben Peskowitz.

5. That the answer failed to disclose or set up that Diana Peskowitz was barred from maintain-

ing this suit by reason of any common law impediment relating to husband and wife.

6. That the appellant failed to move for a nonsuit, thereby admitting respondents' cause of action.

7. That the appellant failed to move for a directed verdict at the close of the entire case.

Respectfully submitted,

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